THE CASE OF BRIGHAM H. ROBERTS.

Can a Polygamist be Excluded from the House of Representatives?

SPEECHES

OF

HON. ROBERT W. TAYLER,

OF OHIO,

IN THE

HOUSE OF REPRESENTATIVES,

December 4 and 5, 1899, and January 23 and 25, 1900.

WASHINGTON.
1900.

P

SPEECHES

OF

HON. ROBERT W. TAYLER,

OF OHIO,

December 4, 1899.

PROCEEDINGS WHILE THE SWEARING IN OF MEMBERS WAS PROGRESSING.

Mr. TAYLER of Ohio (when the State of Utah was called). Mr. Speaker, I object to the swearing in of the Representative-elect from Utah and to his taking a seat in this body. I do so, Mr. Speaker, on my responsibility as a member of this House, and because specific, serious, and apparently well-grounded charges of ineligibility are made against him. A transcript of the proceedings of court in Utah evidences the fact that the claimant was in 1889 convicted, or that he pleaded guilty, of the crime of unlawful cohabitation. Affidavits and other papers in my possession indicate that ever since then he has been persistently guilty of the same crime, and that ever since then he has been and is now a polygamist. If this transcript and these affidavits and papers tell the truth, the member-elect from Utah is, in my judgment, ineligible to be a member of this House of Representatives both because of the statutory disqualification, created by the Edmunds law and for higher and graver and quite as sound reasons. I ought also to say, in addition to what I have just said, that I have in my possession a certified copy of the court record under which the claimant to this seat was supposed to be naturalized, and that eminent counsel assert that if that be the record in the case there is grave doubt if the claimant is a citizen of the United States. I offer and express no opinion upon that proposition.

Mr. Speaker, if it were possible to emphasize the gravity of these charges and of the responsibility that is at this moment imposed upon this House, we will find that emphasis in the memorials, only a small part of which could be physically cared for in this Hall, but all of which I now present to the House, from over 7,000,000 American men and women, protesting against the entrance into this House of the Representative-elect from Utah.

December 5, 1899.

REPRESENTATIVE-ELECT FROM UTAH.

The SPEAKER. Under the order of the House on yesterday it is agreed that immediately after the reading of the President's message the House would proceed to consider the following resolution, which the Clerk will again report.

The Clerk read as follows:

Whereas it is charged that Brigham H. Roberts, a Representative-elect to the Fifty-sixth Congress from the State of Utah, is ineligible to a seat in the House of Representatives; and

Whereas such charge is made through a member of this House, on his responsibility as such member and on the basis, as he asserts, of public records, affidavits, and papers evidencing such ineligibility:

Resolved, That the question of the prima facie right of Brigham H. Roberts to be sworn in as a Representative from the State of Utah in the Fifty-sixth Congress, as well as of his final right to a seat therein as such Representative, be referred to a special committee of nine members of the House, to be appointed by the Speaker; and until such committee shall report upon and the House decide such question and right the said Brigham H. Roberts shall not be sworn in or be permitted to occupy a seat in this House; and said committee shall have power to send for persons and papers and examine witnesses on oath in relation to the subject-matter of this resolution.

Mr. TAYLER of Ohio. Mr. Speaker, I would like to have a confirmation here of the arrangement made with the gentleman from Tennessee [Mr. RICHARDSON] as to the length of time the discussion on this resolution shall endure. I believe the understanding is that one hour and a quarter on a side it to be allotted.

Mr. RICHARDSON. Yes; or an hour and a half on a side, inasmuch as the gentleman from Ohio insisted that the time used by the gentleman from Utah [Mr. Roberts] should be charged to the minority. We thought he ought to have his own time within which to present his own case, and then if we were given an hour that would be satisfactory. The gentleman from Ohio would not agree to that, and we finally asked for an hour and a half, and I hope the gentleman will agree to give us an hour and a half on this side.

Mr. TAYLER of Ohio. The difficulty about that is that the hour to which the debate will run will not be fixed. I thought it wise to fix the time when the debate should end before we begin it. I suppose the member-elect from Utah will discuss the same side of the question as will the gentlemen represented by the gentleman from Tennessee, and therefore that time ought all to be counted together.

Mr. RICHARDSON. I do not know what line of argument the gentleman from Utah will make, and I thought that he ought to have his own time in which to debate it. If the gentleman will give us an hour and a half, I think we can get through.

Mr. TAYLER of Ohio. Mr. Speaker, speaking for myself, I have no objection to the gentlemen on the other side having one hour and a half.

The SPEAKER. And the same length of time for your side?

Mr. TAYLER of Ohio. The same length of time on this side.

The SPEAKER. The proposition is for three hours' debate, one-half to be controlled by the gentleman from Ohio [Mr. TAYLER] and one-half by the gentleman from Tennessee [Mr. RICHARDSON]. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

Mr. RICHARDSON. It is agreed between the gentleman from Ohio [Mr. TAYLER] and myself that the substitute we shall offer may be read and considered pending.

The Clerk read as follows:

Whereas Brigham H. Roberts, from the State of Utah, has presented a certificate of election in due and proper form as a Representative from said State: Therefore, be it

Resolved, That without expressing any opinion as to the right or propriety of his retaining his seat in advance of any proper investigation thereof, the said Brigham H. Roberts is entitled to be sworn in as a member of this House upon his prima facie case.

Resolved further, That when sworn in his credentials and all the papers in relation to his right to retain his seat be referred to the Committee on the Judiciary, with instructions to report thereon at the earliest practicable moment.

Mr. TAYLER of Ohio. I understand that is merely read for information.

The SPEAKER. It is read for the information of the House.

Mr. RICHARDSON. I want it considered as pending.

Mr. TAYLER of Ohio. I may want to make a motion affecting it.

Mr. Speaker, I am not unmindful of the importance of the question which the House is about to decide. It is unusual, but not unprecedented. It ought not to be resorted to for partisan purposes or for trivial reasons. Nor would I urge it now if I did not believe that a proper sense of our duty demanded it. We do not undertake to determine now the right of the claimant to a seat here, but only whether or not he shall be halted at the bar of the House and await the administration of the oath of office to him until a committee of the House and the House itself shall determine that right. If upon investigation it shall develop that the claimant is entitled to his seat, then an injustice will be done him by keeping him out. But that injustice is not comparable to the injustice and wrong that will result to the House and to the country if, being ineligible in the respects charged, he should sit for one hour as a member of the House. A due respect for the opinion of the country and for this House demands that, notwithstanding the preliminary character of this question, it shall be argued with reasonable fullness now.

Of course, I do not need to say that in so far as such a thing is possible I have not prejudged this case either as to the law or the facts. If it shall appear that the allegations made against him be false, I will welcome the claimant to a place on this floor. If the facts be as alleged and they create no lawful ineligibility, I will vote to permit him to take his seat on the floor of the House.

In the first place, I will minister to a much desired brevity and lucidity if I read the eighth section of what is known as the Edmunds Act and briefly quote from the proclamation of amnesty made by President Cleveland and before him by President Harrison.

SEC. 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment, or to be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place or under the United States.

The proclamation of President Harrison, dated January 4, 1893, has this pardoning clause:

Do hereby declare and grant full amnesty and pardon to all persons liable to the penalties of this act by reason of unlawful cohabitation under the color of polygamous or plural marriages who, since November 1, 1890, have abstained from such unlawful cohabitation, but upon the express condition that they shall in future obey the laws of the United States hereinbefore named, and not otherwise.

The proclamation of President Cleveland granted pardon in this language:

> To all persons who have, in violation of said act, committed either of the offenses of polygamy, adultery, or unlawful cohabitation under the color of polygamous or plural marriages, or who, having been convicted of violation of said act, are now suffering deprivation of civil rights in consequence of the same, excepting persons who have not complied with the conditions contained in said proclamation of January 4, 1893.

Mr. Speaker, Utah was admitted as a State into the Union on the 4th day of January, 1896.

These are the alleged facts against the claimant:

First. That he was indicted in February, 1887, for unlawful cohabitation, under the Edmunds Act, and pleaded guilty April 29, 1889, and was incarcerated on that account in the penitentiary for four months.

Second. That he has persistently from that time forward down to a recent date been guilty of the offense of unlawful cohabitation, and also that he has continued from the date of his conviction to be, and is now, a polygamist.

Now, these propositions and questions are presented by the alleged facts:

First. That if he was convicted in 1889 under the Edmunds Act, did he not then become, and ever afterwards remain, by reason of section 8, ineligible to be a member of Congress unless he was pardoned? If he was guilty of polygamous cohabitation between November 1, 1890, and the date of the Harrison proclamation, he was not pardoned by that proclamation.

The Harrison proclamation pardoned no polygamist as such. If Roberts was a polygamist January 3, 1893, and prior thereto, even though not convicted, he did not receive pardon.

If, after January 3, 1893, and before September 25, 1894, he was guilty of polygamy or unlawful cohabitation, then he lost the benefit of the Harrison proclamation and the Cleveland proclamation did not affect him at all.

If, after September 25, 1894, and before January 4, 1896, the date of Utah's admission, he was either a polygamist or unlawfully cohabited, the pardons did not affect him.

All these things are charged, and it is claimed, on the basis of ex parte affidavits, can be proved.

Second. If he has been persistently guilty of the offense of which he was convicted, and has been ever since up to January 4, 1896, the date of the admission of Utah, a polygamist, is he not ineligible under the Edmunds law, independent of his conviction?

Third. If he has been ever since 1889 and is now a polygamist, may he not be ineligible to be a member of Congress if it so wills, independent of the ineligibility created by the Edmunds law? I will later on give the definition by the Supreme Court of a polygamist.

Fourth. Is it clear that the compact created between the United States and the people of Utah by the proclamations, enabling act, constitution of Utah, and the political history associated with these facts do not justify the House in refusing admission to the claimant?

Fifth. May it not be that upon a careful examination of the law it will be found that the claimant is not a citizen of the United States?

Sixth. Is it wise, if the facts be as alleged, except as to the status of the claimant as a present lawbreaker, to subject his case to the doubtful process of expulsion?

Doubtful for two reasons:

First. Because it requires the concurrence of two-thirds to expel him.

Second. Because very eminent lawyers from the beginning of the Government down to the present time have taken the position that the House has no right to expel except for some misconduct while a member and relating to his office as a member.

The House of Representatives has never decided that it had the power to expel under such circumstances, and it has decided that it has no right to expel under such circumstances.

In the first session of the Thirty-fifth Congress, the Congress of which our honored friend and colleague, Mr. GROW, was a member, one Matteson, who had resigned in the face of a resolution of expulsion in the preceding Congress, came, and a resolution to expel him for the offense charged against him in the preceding Congress was introduced, was referred to a committee of which the gentleman from Pennsylvania [Mr. GROW] was a member, and that committee, by an all but unanimous voice, reported that the House had no power, mean and low and vile as the character of that man was, as exhibited by his conduct before that time, to expel him, because it had no right to expel a man for that which had occurred prior to his election to Congress. And the House, by a considerable majority, sustained the committee, and Matteson, who was declared unfit to be a Representative in Congress because of his connection with certain bribers and bribe takers, was permitted to remain further unquestioned as a member of the United States House of Representatives.

And so I give this warning to those of you who oppose the passage of this resolution in the fond hope that hereafter, if these facts be as alleged, you may satisfy your consciences and constituents by voting to expel the claimant. I warn you now that you will have a larger difficulty to satisfy your consciences and your judgments that this House has power to expel the claimant than that it has the right and power to exclude him now.

I shall not undertake to discuss all of the questions I have raised. Time forbids, and it is not otherwise necessary.

Two broad questions are raised in this case:

First. Is the claimant on the alleged facts eligible to be a member of Congress?

Second. Can the question of his eligibility be raised when he comes to the bar to be sworn, and can he be required to stand aside until the House shall have investigated the question of his right to take the seat?

On the first proposition, as to the question of eligibility, we must inquire first whether Congress or the House has power to impose qualifications in addition to those enumerated in the Constitution; second, whether Congress has imposed any qualification—if it has that right; and third, has the House, independent of any previously enacted law, the right to impose a qualification or declare a disqualification when a member-elect comes to the bar?

There are six different provisions in the Constitution respecting qualifications of a member of Congress. First, that he shall not be a member unless he shall have attained the age of 25 years; second, he shall have been a citizen of the United States for seven years; third, that he must be an inhabitant of the State where chosen; fourth, that he may be disqualified by judgment in cases of impeachment; fifth, a person holding an office under the United States shall not be a member of either House of Congress; and

sixth, the provision in the constitutional amendment respecting those who have taken an oath inconsistent with their acts during the war of the rebellion.

There is no decision of the United States Supreme Court upon the question as to whether Congress has the power to add to the qualifications named. There has been much academic discussion of the subject. Some very excellent authority has declared that Congress has no such power. But, notwithstanding a feeling of reverence for the opinion of some men, I shall proceed briefly to combat that position.

Our State courts in many instances have construed exactly similar provisions. The supreme court of the State of New York, in the case of Rogers *vs.* Buffalo, in an opinion rendered by Mr. Justice Peckham, who now adorns the bench of the Supreme Court of the United States, held that a provision of the constitution declaring certain qualifications for office was not exclusive and did not bar the legislature from imposing new, reasonable, and proper qualifications.

In a very learned opinion by one of the ablest judges that ever sat on the bench in Ohio, Judge McIlvaine, in the case of Ohio against Covington, the same doctrine is explicitly and carefully and most forcibly laid down, and in the case of Darrow against The People, in 8 Colorado, where a negative provision of the constitution exactly similar in its rhetorical construction to that I am now discussing was under consideration, it was held that as the provision of their constitution was negative it imposed no restriction whatever upon the legislative body.

But I find stronger intrinsic argument right in the body of the Constitution itself against this authority to restrict the power of the House.

In the first place, the language providing for the age, and so on, is negative in its character. No person shall become a member of Congress unless he is of a certain age, etc. And that clause of the Constitution was most ably and ingeniously and persuasively argued in 1807 upon the floor of the House of Representatives by John Randolph. I think no man can read that argument without being convinced at least as to the power of Congress.

But, in the next place, I want to call your attention to the last paragraph of Article VI. Here we have the argument, by analogy, that, in my opinion, modestly put forward, is conclusive upon the question of construction:

> The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution.

There is a positive affirmative declaration by the Constitution that a certain oath shall be administered to certain officers. If the construction contended for as to the qualification of members of Congress is correct, then Congress has no power to demand any other oath of any officer named in this section than that which is named in it.

Mr. Chief Justice Marshall had occasion to refer to that when he said, in the case of McCullough against Maryland, one of the greatest expositions of the Constitution to be found in the reports of the Supreme Court:

> He would be charged with insanity who should contend that the legislature might not superadd to the oath directed by the Constitution such other oath of office as its wisdom might suggest.

Now, if John Marshall characterized as insanity a proposition that a positive declaration of the Constitution respecting an oath could not be added to, I shudder to think what word he would have used had he been referring to the mere adding to a negative expression of the Constitution.

But that same clause has another paragraph in it:

> But no religious test shall ever be required as a qualification to any office or public trust under the United States.

Now, if the Constitution had laid down all the qualifications which Congress or any other power had the right to impose, then it was unnecessary they should go on and declare that no religious test could be required. The Constitution is inconsistent in its parts and contradictory of itself if it be true that it meant that no qualification should be added except those named. If without the provision about a religious test such test might have been required, then the asserted interpretation of the qualification clauses falls to the ground. The presence of the religious-test clause is only to be explained and justified on the ground that without it Congress would have had the power to impose it.

But the construction here contended for has often been asserted and passed upon by the House of Representatives in numerous cases that have been here decided. I shall not advert to them specifically now, for the reason that they become more pertinent as we proceed to the second broad question as to our right to stop the claimant at this point. But our statutes are full, fairly swarming with penal provisions declaring that persons who have committed certain offenses are ineligible to office or place under the United States; and all down along the line, from the very first Congress that sat, down until we had a complete penal system, Congress has recognized, and it has not been disputed, the right to declare persons ineligible to office for the commission of crime.

But, Mr. Speaker, I do not need for the purpose of this case to stand upon the broad right of Congress to add qualifications to those named in the Constitution. The ineligibility created in connection with the punishment of crime may and does arise out of the power inherent in Congress to punish crime; and in its spirit this does not conflict with the Constitution. It bars the way to no man against his will; it conflicts in no sense with the freedom of any man to follow any pursuit he pleases, and to put himself in any class which he may desire to put himself in. The ineligible class created by penal statutes is one that no man can enter without committing a crime. Do you think it violates either the letter or the spirit of the Constitution to say that no free agent who has every right that the laws or the Constitution ought to give to any man shall be barred from office unless he willfully goes into the criminal class?

Now, that proposition is not without authority. It is most cogently stated and reasoned and laid down in the well-known case of Barker against The People in 3 Cowen. I ought to say at this point that in that case the court first held—although it did not need to so hold—that every man was eligible for office who was not specifically disqualified by the Constitution. It thus directly opposes the position I took a moment ago; but the court goes on to elaborately show that in the way of punishment for crime the legislature had ample power and authority to disqualify.

But I ought also to say that Mr. Justice Peckham, in the case of Rogers against Buffalo, to which I referred a few moments ago, left nothing standing of the law in the Barker case except the

proposition that I stand on here—that we may disqualify for crime—and pointed out most clearly that the position taken in that case, in so far as it meant to declare the want of power in the legislature to add to the constitutional qualifications, was wrong, but that the legislature could not add arbitrary conditions, such as that no man who was a physician could be a candidate for office, and so on.

In the second place, under this head: Has Congress imposed any such qualification as apply to the claimant?

I have already read section 8 of the Edmunds Act. That law is in force to-day. It is a penal law of present operation in all of its parts over the Territories and the District of Columbia, and as to one who has rendered himself amenable to the punishment part of it it is operative everywhere where one is now that has been convicted under that law. That law has been held constitutional in the case of Murphy against Ramsey, in 114 U. S. Reports, page 15. It will be noted that that act makes ineligible not only one guilty of unlawful cohabitation, but also a polygamist, and does not require any conviction in either case. The charge is that the claimant was convicted of the first offense, and that he is now and has been for years a polygamist. Now, what is a polygamist? We are not in doubt as to that. The Supreme Court of the United States has made very clear what that is, and I will be pardoned for reading now very briefly what it has said. I make the following quotation from Murphy *vs.* Ramsey (114 U. S., pages 41 and 42):

In our opinion any man is a polygamist or bigamist, in the sense of this section of the act, who, having previously married one wife, still living, and having another at the time when he presents himself to claim registration as a voter, still maintains that relation to a plurality of wives, although from the date of the passage of the act, March 22, 1882, until the day he offers to register and vote he may not in fact have cohabited with more than one woman. Without regard to the question whether at the time he entered into such relation it was a prohibited and punishable offense, or whether by reason of lapse of time since its commission a prosecution for it may be barred, if he still maintain the relation, he is a bigamist or polygamist, because that is the status which fixed habit and practice of his living has established. He has a plurality of wives, more than one woman whom he recognizes as a wife, of whose children he is the acknowledged father, and whom with their children he maintains as a family, of which he is the head. And this status as to several wives may well continue to exist, as a practical relation, although for a period he may not in fact cohabit with more than one; for that is quite consistent with the constant recognition of the same relation to many, accompanied with a possible intention to renew cohabitation with one or more of the others when it may be convenient.

It is not, therefore, because the person has committed the offense of bigamy or polygamy, at some previous time, in violation of some existing statute, and as an additional punishment for its commission, that he is disfranchised by the act of March 22, 1882; nor because he is guilty of the offense, as defined and punished by the terms of the act; but because, having at some time entered into a bigamous or polygamous relation, by a marriage with a second or third wife, while the first was living, he still maintains it, and has not dissolved it, although for the time being he restricts actual cohabitation to but one. He might, in fact, abstain from actual cohabitation with all, and still be much as ever a bigamist or polygamist. He can only cease to be such when he has fully dissolved in some effective manner, which we are not called on here to point out, the very relation of husband to several wives which constitutes the forbidden status he has previously assumed.

Cohabitation is but one of the many incidents to the marriage relation. It is not essential to it. One man, where such a system has been tolerated and practiced, may have several establishments, each of which may be the home of a separate family, none of which he himself may dwell in or even visit. The statute makes an express distinction between bigamists and polygamists on the one hand and those who cohabit with more than one woman on the other; whereas, if cohabitation with several wives was essential to the description of those who are bigamists or polygamists, those words in the statute would be superfluous and unnecessary. It follows, therefore, that any

person having several wives is a bigamist or polygamist in the sense of the act of March 22, 1882, although since the date of its passage he may not have cohabited with more than one of them.

Now, I have already stated, and I shall not go on further with it, as to the operation of the two proclamations of amnesty. It is enough for me to say that if the facts be as alleged, the claimant is in no better position than if no proclamation for amnesty had ever been issued.

Finally, upon this subject of ineligibility—and I ask the attention of the House to these measured words—if we consider the great powers of this House, unrestricted save by the Constitution, we shall see that it can impose qualifications and declare ineligibilities probably sufficient where crimes or offenses against civilization are concerned, to justify it, and in some instances to command it, to refuse admission to persons thus tainted.

If I am correct in this interpretation of our rights and power, it is not difficult to find its just application to the asserted facts in this case. For all such exercise of power by Congress those who participate in it are answerable only to their consciences, their constituents, and their country.

Mr. Speaker, we are not without precedent upon that proposition. This House, so far from denying this power to act along the line that I have just suggested, has declared its right to exercise that power. In the Forty-first Congress Mr. Whittemore, of South Carolina, for some charge of selling cadetships, was under the ban of the House. A resolution to expel him was about to be adopted when he resigned, and the House lost its jurisdiction and could only pass a resolution of censure. Within six weeks from the date of his resignation he came to the bar of the House with a certificate under the broad seal of the State of South Carolina, exact, perfect, unquestioned, claiming his right to a seat under and by virtue of a new election at the hands of the constituency who knew his offense and sent him here as their representative.

Mr. Speaker, that man had committed a crime, but it was a crime which carried with it ineligibility, possibly not for Congress at all, and never except after due conviction in the courts of justice in a constitutional manner. But the House did not allow itself to be thus hedged in by any inferior authority. It did not even wait to do the things that we want done here. The House not only did not suspend the administration of the oath until a committee might examine the question and the House later determine, but it said to him then and there, "You shall not now or ever be sworn;" and his credentials were thrown back in his teeth and he never took his seat. That is a case as parallel as two cases can be to the case that we make here, with this difference: Instead of giving the committee time to answer the question whether he was entitled to take the oath of office, they decided it right then and there and sent him back to his people.

This case I take up at this point as sustaining the general proposition I just made, and also as sustaining the second proposition, that the House has the right to halt a man on the ground of ineligibility and declare that he shall not take the oath of office until the question of his eligibility has been answered.

Now, the power and right of the House in this respect are inherent and can not be questioned. It is only a question of propriety;

it is only a question of expediency; it is only a question of parliamentary wisdom in order that no unwise precedent may be created for a later day. There has been much loose talk in the newspapers and elsewhere about the right and power of Congress and its duty in this regard, and as to what it has done. I do not want to make the statement as absolutely correct, but to this extent: I assert that in so far as my investigation has gone, and it has covered hundreds of cases and many volumes of the RECORD and Globe, I can find no instance where the House of Representatives has declared that it has not the right and that it ought not to halt a man at the bar of the House when the question of his eligibility was raised.

On the contrary, Mr. Speaker, I have, besides the case to which I have already referred, many others which explicitly declare the right of the House to do just this very thing, and where the House did it and refused to permit the oath to be administered to the applicant.

The general doctrine on this subject is laid down in McCrary's Law of Elections. I read from that not because the citation appears in Judge McCrary's work, but because I have read speeches of, I think, a hundred eminent lawyers and statesmen on the floor of the House where the doctrine laid down by McCrary has been declared and sustained, and I assert that the instances where a contrary doctrine is sought to be asserted by any speaker on the floor of the House, or any lawyer of eminence throughout the country, are so small and so few as to be swallowed up and overwhelmed in the flood of contrary opinion as laid down by the best writers and speakers of the day.

McCrary says—and the first two sentences seem to be all that some people have read on this subject:

> The regular certificate of election properly signed is, as we have seen, to be taken as sufficient to authorize the person holding it to be sworn in. It is prima facie evidence of his election, and the only evidence thereof which can be considered in the first instance and in the course of the organization of a legislative body. But there are questions which may be raised touching the qualifications of a person elected which may be investigated and decided as a part of the prima facie case and as preliminary to the swearing in of the claimant.
>
> *Time.*—If a specific and apparently well-grounded allegation be presented to the House of Representatives of the United States that a person holding a certificate of election is not a citizen of the United States, or is not of the requisite age, or is for any other cause ineligible, the House will defer action upon the question of swearing in such person until there can be an investigation into the truth of such allegation.
>
> It is necessary, however, that such allegation should be made by a responsible party. It is usually made, or vouched for at least, by some member or member-elect of the House. It is to be presented at the earliest possible moment after the meeting of the House for organization, and generally at the time that the person objected to presents himself to be sworn in. The person objected to upon such grounds as these is not sworn in with the other members, but stands aside for the time being, and the House, through its committee, with all possible speed proceeds to inquire into the facts.
>
> The certificate of election does not ordinarily, if ever, cover the grounds of the due qualifications of the person holding it. It may be said that by declaring the person duly elected the certificate by implication avers that he was qualified to be elected and to hold the office. But it is well known that canvassing officers do not in fact inquire as to the qualifications of persons voted for; they certify what appears upon the face of the returns and nothing more.

This action, as I have said, Mr. Speaker, has been sustained time and time again on the floor of the House with the overwhelming mass of declarations and testimony of the ablest men of the country, to which I have already referred.

A most elaborate Congressional discussion occurred in the

Fortieth Congress as to the Kentucky election. This Congress met in special session on the 4th of March and adjourned to a fixed date about the 1st of April. Immediately after this elections were held in the State of Kentucky. On the 3d of July the Kentucky members presented themselves and demanded the right to be sworn in as members of the House under the House rules. But the House refused to permit them to be sworn in on the ground that they had been disloyal—that is to say, on the ground that they suffered from some ineligibility. This was not an ineligibility created by the Constitution itself, nor created by any existing law of Congress, but because the House held them to be ineligible for the reason that they had been disloyal. The cases were discussed in page after page in the Globe. Report after report was filed in connection with the cases.

The discussion proceeded for some time upon the motion to refuse to administer the oath and to refer the cases to the Committee on Elections.

Representative Bingham, chairman of the Judiciary Committee, on page 472, said:

I submit as a question of order that the resolution by my colleague, Mr. Schenck, is a resolution which goes to the qualification of the member named. The State is entitled to representation upon the presentation of its certificate under its grand seal, and the members are entitled to be sworn in according to the usual precedents of this country, unless special charges be made showing them not entitled or disqualified. They have the right to be sworn in unless there be presented specific cause against them, in which case, I say, the case ought to be referred to the committee, as proposed by my colleague. I believe my colleague has presented the question exactly according to the established precedents.

Mr. Schenck, on page 477, says:

The House is not asked to declare that John D. Young is not entitled to a seat here, but it is asked to declare upon this showing that he shall not be permitted now to take the oath, but shall stand back until some inquiry shall be made into the truthfulness of these allegations and a report made to the House upon which it can understandingly determine the question ultimately and finally.

On page 479 Mr. Boutwell says:

I think we are justified in taking this position: That when a member rises in his place and states that of his own knowledge or upon information worthy of belief a person presenting himself here for a seat in this House is or has been substantially a traitor to his Government, we have a right to decline to allow that person to take the oath until that matter has been investigated and he has been relieved from the charge.

Many other members made arguments of like character, and it will be difficult to find any serious objection at that time to the action of the House on that ground. The resolution was adopted, and the case went to the Committee on Elections.

On the 5th of July Mr. Marshall rose to a question of privilege, and moved that in the cases of Beck and Grover the Committee on Elections be discharged from further consideration of the question submitted to them. At this time Mr. Dawes, of Massachusetts, entered the discussion. Mr. Dawes was then the oldest member in respect to service in the House, had been chairman of the Committee on Elections for ten years or more, and may safely be said to be as high authority on the law pertaining to this case as any man who has ever sat in the House of Representatives.

He takes occasion in this debate to state in various forms his views, but the shortest statement of the proposition is found on page 502, in answer to a question from Mr. Wood, of New York. He said:

A well-grounded charge made in good faith against any man bringing a certificate here which extends in its scope to his qualification to sit as a mem-

ber of this House should be heard before he is permitted to take the oath of office or occupy a seat.

Mr. Bingham again, on page 503, reasserts that—

When a charge is made in due form either upon the responsibility of a member or by petition and ex parte affidavit against a person or persons claiming to be elected as members of this House from an organized State, the case ought to be referred to a committee, and the presentation of such a case, going to the qualifications of a person presenting himself as a member, ought to suspend the administration of the oath to him.

Mr. Dawes's contention was sustained by the House (page 514). The committee in that case in its preliminary report held:

That any specific and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House ought to be investigated and reported upon before such person is permitted to take the seat.

On the 17th of July Mr. Brooks rose to a question of privilege respecting the same subject. The discussion proceeded as before, but the immediate question was whether the withdrawal of an affidavit by one of the ex parte witnesses affected the case.

Mr. Dawes more than once in this discussion, on page 700, declares the right to refuse to swear in a man against whom a well-grounded charge of disqualification is made. What he said in one instance is especially applicable here:

I submit that that gentleman [referring to another member] has already committed himself to the doctrine that no matter what crime a man may have committed against his country, he has the right to come here and take a seat in this House, to sit here in mockery of the authority of the Government, pretending to make laws in its support.

He says again, on the same page:

When there is presented alongside of the certificate a case which leads members here, clothed by the Constitution with the power and duty of passing upon the qualifications of those who apply for admission—when there is presented alongside of such a certificate such a case as leads us to suppose that there is good reason to believe that the man presenting himself is disqualified, it is the duty of those whom the Constitution requires to pass upon the qualifications of members to stop at this initial point and pass upon that question.

On the 21st of November, 1867 (Globe, volume 64, page 768), the members-elect from Tennessee were called. Mr. Eldredge objected to swearing in of Mr. Stokes, and moved that his credentials be referred to the Committee on Elections.

The only charge against Stokes was that he had written a letter in May, 1861, containing disloyal sentiments, but it was shown that after that he had fought for two years in the Union Army. He was seated, as he ought to have been.

Mr. Brooks objected to the swearing in of Mr. Butler, Mr. Mullen, and Mr. Arnell, of Tennessee. There was an extended discussion, the facts in each case presented, and the House passed the following substitute on a yea-and-nay vote of 117 yeas and 28 nays, as follows:

That the credentials of R. R. Butler, of the First district of Tennessee, be referred to the Committee on Elections, and that he be not sworn in pending the investigation.

On the 21st of November, in the discussion of the Tennessee case, page 774, Mr. Schenck gives his second well-considered approval of the doctrine.

On page 777 Mr. Shellabarger, of Ohio, puts himself on record as sustaining the doctrine of the committee.

On December 3 the committee filed a second report, found in 2 Bartlett's Election Cases, page 368. In this report the committee assert that they adhere to the views expressed in the first report, on the ground that the House is the judge of the qualifications of

its members, of which fidelity to the Constitution is one, and that such charge should be investigated before such person is permitted to take the seat.

The committee calls attention to the fact that the House concurred in that view of the committee.

Again, in a report filed January 7, 1868, the committee announces its continued adherence to the rule previously laid down.

In a report made January 21, 1868, by Mr. Dawes (page 405, 2 Bartlett), in the John Young Brown case, a very elaborate report, the same doctrine is laid down, and a resolution was reported that Brown was not entitled to take the oath of office or to hold the seat.

In the case of McKee *vs.* Young (page 434) the same kind of a resolution was presented. This report was made March 23, 1868, and laid down the same doctrine of ineligibility.

On the 31st of January, 1868, the case of Smith *vs.* Brown came up for discussion in the House, and continued for some days.

The questions were elaborately discussed, especially by Mr. Dawes. (See pages 894, 895.)

Of course at that time the immediate question to determine was as to the general right of Brown to take his seat, and not the question as to the right to halt him at the bar of the House during the organization and refuse to administer the oath. Nevertheless the same question is involved in the lengthy discussion which followed.

On page 899 Mr. Shellabarger's views are very succinctly put in a letter which he wrote while absent from Washington.

A very able and instructive discussion is found in the speech of Mr. Cook, especially on page 909.

The final argument made by Mr. Dawes will be found in volume 69, page 149, Appendix, Fortieth Congress.

Then in the same Congress we find also the case of Winchester and Rice. That was in the next Congress, but the time is unimportant. This is the case of Winchester and Rice, from the State of Kentucky, which came up on the credentials in the midst of the organization of the House, when only about one-half of the members had been sworn in. Objection was made to the swearing in of Winchester on the ground that there was an indictment pending against him in the United States court in Kentucky, charging him with disloyalty, and a similar charge against Rice.

An effort was made to have them stand aside by consent. They refused to do it. A resolution was offered that their cases be sent to a committee, and pending the examination of the case by the committee that they be not permitted to be sworn in or take seats. The previous question was demanded; the previous question was ordered by a yea-and-nay vote of the House of 96 to 48, and the main question, which had actually been settled by the calling and settling of the previous question, was about to be put, when Winchester and his companion asked that the case go over until the next day. The next day they came in, and it was apparent from a moment's examination of the testimony that they presented that there was nothing in the charge of disloyalty.

The indictment against Winchester had been dismissed. There was no charge against him; but, nevertheless, the House had taken hold of the question. It had passed upon the question, had assumed and kept jurisdiction of the question, and beyond any sort of controversy would in another instant have sent those cases to the committee had they not voluntarily withdrawn.

Somewhat more in detail the proceedings connected with the organization of the Forty-first Congress are as follows:

At the organization of the House of Representatives in the Forty-first Congress, on the 4th of March, 1869 (Globe, volume 74), after the election of a Speaker, Mr. Butler of Massachusetts, when Maryland was called (page 5), objected to the swearing in of Patrick Hamil, of that State, on a charge of disloyalty. A discussion followed, and pending that the other members who had been called were sworn in.

Finally the Speaker suggested that Mr. Hamil step aside for the present, which was done.

When the State of Kentucky was called (see page 6), Mr. Shanks objected to the swearing in of Boyd Winchester and John M. Rice on the ground that they had been disloyal, and that Winchester was under indictment for disloyalty.

The Speaker suggested that the gentlemen whose right was challenged waive the claim of their right to be sworn in until the other members had taken the oath.

Mr. Eldredge hoped that those gentlemen would not yield their right; thereupon the Speaker said:

> Then the question must be decided now. The Clerk will present the resolution of the gentleman from Indiana, Mr. Shanks.

The resolution was therefore read, referring the cases to the Committee on Elections, and that pending such inquiry Winchester and Rice should not be sworn in as members.

Mr. Shanks called for the previous question. While the vote was being taken on ordering the previous question, Mr. McCormick raised the point of order that those who had not been sworn in could not vote. The Speaker refused to entertain the point, as the House was dividing.

The question then came up on ordering the main question. Mr. Eldredge called for the yeas and nays, which were ordered.

On ordering the previous question there were—yeas 96, nays 48; so the previous question was ordered. Then Mr. Eldredge raised the point of order that none but those sworn in had the right to vote. The Speaker overruled the point of order, and held that those not sworn could vote.

It was not until this point that, at the suggestion of one of the Kentucky members, Messrs. Winchester and Rice withdrew for the time being for the sake of removing any obstacle to the progress of business.

The House, however, having ordered the previous question on the proposition to send their cases to the Committee on Elections before being sworn in, and the Chair having held that all members-elect were entitled to vote on the proposition, it is apparent that it put itself squarely in favor of halting at the bar of the House a person charged with ineligibility, and sending his case at once to the committee.

On the following day (see page 13) a resolution was offered by Mr. Beck that Messrs. Winchester and Rice be now sworn in. He accompanied his resolution with a statement showing that the charges against them were untrue, and that the indictment referred to in the proceedings of the day before had been dismissed.

Mr. Shanks, who made the objection, admitted that there was a fair presumption that there was nothing in the case. The resolution was adopted, and Messrs. Winchester and Rice were sworn in.

Objection was also made on the first day to the right of Vanhorn and Dyer, of Missouri, to be sworn in; but the only reason given for objecting was that they were not actually elected—no question of qualification arising.

Messrs. Vanhorn and Dyer, after a brief discussion, temporarily withdrew.

Mr. Lawrence objected to the swearing in of Mr. Rogers as a member from the Second district of Arkansas, but his statement of the case showed only a claim of unfair election.

Mr. Garfield said:

> I desire to ask my colleague if all that he is now reading or suggesting from that paper is not clearly a matter that relates to the contest as to the ultimate right of this gentleman to his seat, and not to the prima facie right on the credentials to be sworn in as a member. It seems to me that this person has a right to be sworn in if his credentials are regularly witnessed and there be no personal objections which would prevent him from taking the oath.

On motion of Mr. Farnsworth, Mr. Lawrence's resolution was laid on the table, and Mr. Rogers was sworn in.

At this point the House adjourned.

On the reassembling of the House a resolution was adopted notifying the Senate that the House had assembled, chosen a Speaker, and that it was ready to proceed to business.

This notwithstanding no other officers of the House had been elected.

Thereupon the cases of Vanhorn and Dyer came up on a resolution that they be sworn in.

Mr. Benjamin observed (see page 10) that in these cases there was no point raised as to the eligibility of these parties to occupy seats in the House. It was a question of election, and of course would go to the Committee on Elections, but they were entitled to be sworn in.

A motion to lay the resolution on the table was defeated by a vote of 4 yeas to 163 nays.

This shows that the House took complete jurisdiction of the subject of swearing in the men, and permitted them to be sworn in upon a manifest theory. It was a question merely as to their election, and not as to their eligibility.

Mr. Butler withdrew his objection to the swearing in of Hamill, of Maryland, because he said he had examined the affidavits and evidence in the case and thought that the prima facie case as made by the certificate ought at this time to prevail.

The case was sent to the Committee on Elections and was never heard of again.

Later, the same day, Mr. Farnsworth (page 18) moved that the members from Georgia be sworn in. After considerable discussion, Mr. Farnsworth modified his resolution, ordering a reference of the credentials and papers of the Georgia members to the Committee on Elections when appointed, with directions to report to the House whether their papers present a prima facie right to their seats.

These members were therefore not permitted to be sworn in, but their cases passed over under the resolution.

Thereupon a motion was made that the House now proceed to the election of Clerk, Sergeant-at-Arms, etc.

Before the motion was put Mr. Butler, of Tennessee, rose to a question of privilege and asked leave to present the credentials of Mr. Rogers, of Tennessee, claiming a seat as Representative from that State.

The Speaker refused to entertain it as a question of privilege,

holding that it was not as high a question as the election of officers. Thereupon the House proceeded to elect its officers.

I make the following comments on the proceedings connected with the organization of the Forty-first Congress:

(1) After the election of the Speaker, and before all the members were sworn in, the body proceeded to consider questions of the right of members-elect to be sworn in. Some it permitted to be sworn in.

As to Winchester and Rice it practically decided that their cases could be sent to the committee to determine their right to take the oath as well as the right of members-elect to a seat, though their credentials were perfect.

(2) In the Georgia case the same thing was done, although it ought to be said that the ground for not settling it at that time was because it was evident that a good deal of time would be spent in the discussion.

(3) The Speaker held that all the members-elect had the right to vote, whether they had been sworn in or not. It is to be presumed that this ruling did not mean that a member-elect had a right to vote on his own case.

(4) Before all the members who had been requested to stand aside had been sworn in, and when the only officer elected was the Speaker, the Senate was notified that the House had chosen the Speaker and was ready to proceed to business.

(5) A committee was appointed to join with a like committee from the Senate to make the usual notification to the President.

(6) The question of the right of the Louisiana members to be sworn in was, before the election of the other officers, referred to the Committee on Elections.

In this case, however, there was question as to whether the credentials on their face were sufficient.

(7) The Speaker refused, on the raising of the question of privilege, to permit Mr. Rogers, of Tennessee, to be sworn in after a motion had been made, but not put, that the House proceed to the election of the other officers.

On the 30th of March, 1870 (Globe, volume 77, page 2299), the credentials of J. C. Connor, claiming a seat as Representative from the State of Texas, were referred to the Committee on Elections.

There seems to have been no demand on the part of Connor to be sworn in.

On page 2322 the Committee on Elections, on March 31, 1870, reported in favor of administering the oath to the Representatives-elect from the State of Texas, including Mr. Connor.

Notwithstanding this report on his prima facie right, an effort was made to offer an amendment that Connor be not sworn in, but that his case be referred to the Committee on Elections, with instructions to report both on the prima facie right and on its merits.

The ground for this resolution was stated to be that Connor, whose certificate was in due form, had committed some offense for which he had been tried by a military court of inquiry and acquitted.

Mr. Butler, of Massachusetts, appears in this case as the champion of the proposed amendment and against permitting Connor to be sworn in, notwithstanding the report of the committee.

Mr. Dawes spoke on the question, declaring that this was a very different case from those which came from Kentucky in the Fortieth Congress, and repeated his statement of the right and duty

of the House where question is made as to the qualification of a person asking to be sworn in.

Many other members took the same ground, but declared that the rule did not apply, as it certainly did not, to a case such as they had under consideration.

In the discussion over the Connor case no serious question seems to have been raised as to the right to stop a member-elect at the bar and refuse to swear him in if the charge of ineligibility was made.

Mr. Banks, on page 2328, asserted the view that while it was not wise always to exercise the high prerogative of refusing to swear a man in, yet that the House had the undoubted power, and that it ought not by any decision ever to seem to doubt or deny its existence.

Mr. Garfield took the same view, on page 2326, saying:

> My friend will allow me to say that we may go back of the certificate in anything that touches the constitutional right of a member to a seat.

The resolution reported by the committee in the Connor case was adopted.

At the organization of the Forty-second Congress, March 4, 1871 (Globe, volume 85, page 6), when the name of Alfred M. Waddell, of North Carolina, was called, after the election of Speaker, Mr. Maynard objected to his being sworn in on the ground that he was personally disqualified.

The Speaker said:

> Following the course adopted in the organization of past Houses, the Chair will first swear in those members against whom no objection whatever is presented,

and the Speaker later on held that Mr. Maynard had the right to make the objection, notwithstanding the fact that he had not been sworn in.

Mr. Waddell accordingly stood aside. No further effort was made in Mr. Waddell's case until after the organization was completed by the election of the other officers.

Accordingly, later in the same day his case was called up and decided on its merits, so that he was permitted to be sworn in.

In the discussion of this case Mr. Maynard, who had objected, said:

> As to whether we shall refer his case to the Committee on Elections or whether we will swear him in, I have felt bound from a knowledge of the facts disclosed to me by a gentleman from North Carolina to make presentation of the case to the House that we might follow the same course as in the last Congress and in the Congress before the last, as well as in the Thirty-ninth Congress. It is a safe, prudent, wise, and judicious course, as the experience of the last few years has clearly demonstrated. If this gentleman shall be found able to stand the ordeal of that examination, he can be admitted on the removal of his disabilities.

Although Mr. Maynard grounded his objection on this personal disqualification and the right of the House to administer the oath, no person controverted that position; but the House passed upon the question of his disqualification; consequently he was entitled to be sworn in.

On the same day, after the election of the Speaker and before the other officers had been elected, an objection was made to the swearing in of the Representatives from Tennessee on some ground connected with the validity of the law under which they were elected: but objection was later on withdrawn and the members-elect were sworn in.

Objection was then made to the Mississippi delegation. This

involved only the question of manner of election. Mr. Bingham, during the debate (on page 9), says:

I trust, sir, the day is past for challenging the right of any State in this Union to representation on the floor of Congress when her Representatives present themselves with certificates prima facie entitling them to seats, unless the persons so presenting themselves should be challenged as disqualified under the Constitution and laws of the United States.

Again, Mr. Bingham (on page 10) says:

According to the traditions of the Republic, when persons come to the bar of this House as Representatives of organized States with a prima facie case of election, and whose personal qualifications are not challenged, it is not usual to deny their admission for the discharge of their duties upon this floor; but it is usual, on the contrary, to admit them and allow them to be sworn in, and if a question arises such as that suggested by the gentleman from Indiana, to wit, an irregularity in the election, it is referred uniformly to the Committee on Elections to ascertain the facts.

Of course this delegation was sworn in and their credentials referred to the Committee on Elections.

Thus we see the House has explicitly declared that it had the right and that it had the power. and that under certain conditions which then existed it would exercise that right and that power, to refuse to administer the oath.

All through these discussions, which I shall not take time to read from, the statement of law is made, almost without being seriously controverted, as laid down in the text of Judge McCrary's book. Mr. Haskell, who was objecting, for another reason, in the Forty-seventh Congress, in the last Cannon case, to the refusal to permit a man to be sworn, quoted the law against himself in this way: That when there is a prima facie case, but two sets of questions can be considered—first, the face of the certificate and the facts revealed in the certificate, and second, those questions going to show the qualifications of the man certified to, as to whether he can take the oath of office or not, and when those two branches of the subject have been exhausted the prima facie case ends.

There was an able Representative stating all the case he could state for himself while on the other side of the practical proposition that confronts us here.

Mr. Speaker, we are told that this will make an unhappy precedent. Precedent! Why, what we do here we do before the open and gazing eyes of all the world, and we are at once dragged to the bar of history to answer for our deeds. We are no cloistered court. We are no statute-bound tribunal. We are the servants of the people, empowered, thank God, under the Constitution to do the right as we see the right. That is the law that binds us. The public eye is on us; the public conscience quickens us. In that presence and before such a judge we can do no wrong if we obey it. [Applause on the Republican side.]

Later the same day.

Mr. TAYLER of Ohio. Mr. Speaker, if I understood the argument of the member-elect from Utah, he exhibited a large incapacity to comprehend the nature of my position and the nature of his position here, and also the spirit of the American people. I am not here asserting that the member-elect from Utah is guilty of any crime; but I indict him upon my responsibility as a member of this House upon the basis of information placed in my hands; I charge him in that sense with this offense, and it is not for the House at this moment to inquire whether those charges

be true or false, but only are they made with the solemnity that should lie at the bottom of a charge made under these circumstances at this hour and in this House.

Our friends upon the other side of the House—and I may justly use that term now, "the other side of the House"—are here to-day worshiping as they have ever worshiped under other forms and for other purposes the fetich of a certificate. All sins are covered for them by the certificate of a sovereign State, and no right exists in Congress to make him pause—he comes with a certificate. If the King of the Cannibal Islands, panoplied with his club and with his feathers, marched down the aisle with a certificate of the governor of Tennessee, we must stand here appalled by the spectacle, and say, "Mr. Speaker, swear him in." [Laughter and applause on the Republican side.]

Mr. FOX. Will the gentleman yield to me for a question?

The SPEAKER. The gentleman has already declined to yield, and so stated to the gentleman from Tennessee.

Mr. TAYLER of Ohio. I have no time to yield now.

Mr. FOX. I want to ask the gentleman a question.

The SPEAKER. The gentleman has stated that he will not be interrupted, and so said to the gentleman from Tennessee.

Mr. FOX. I just wanted to ask the gentleman a question.

The SPEAKER. The gentleman is not in order.

Mr. TAYLER of Ohio. If a boy 10 years old walked down the aisle presenting a certificate as a member-elect from a district in the State of Arkansas, my friend from Arkansas who has just spoken would say, "The absurdity of this certificate is manifest, but we must swear him in." If Li Hung Chang should march down this aisle with a certificate, that certificate must be respected. There is no want of power, there is no absence of propriety in the House ever stopping any man with any certificate for any purpose if it so wills; and always is it its duty, and almost always has it held it to be its duty and its right to pause, to stop at the threshold one whose ineligibility is charged.

Now, my friend from Tennessee told us about the Cannon case. I am grateful for the reference. He quoted from the argument of Mr. Potter and of Mr. HOAR and of Mr. Maynard. I want to say just this about that discussion: That was a discussion which came on and was conducted not to exceed ten or fifteen minutes, and for one column of the CONGRESSIONAL RECORD it contains more inaccurate accounts of what had occurred at other times than any similar statement and page in the CONGRESSIONAL RECORD.

Let me give you a brief account of that episode.

The first session of the Forty-third Congress was on the 1st of December, 1873. The Delegates were not called upon to be sworn in until after the complete organization of the House.

Mr. Maynard suggested that the Delegates be sworn in.

Mr. Merriam said:

Before the Delegate from Utah is sworn in I have a resolution which I desire to offer.

The Speaker then directed the Delegate from Utah to stand aside until those who were not objected to should be sworn in. When the other Delegates were sworn in, Mr. Merriam offered the following preamble and resolution, on which he demanded the previous question:

Whereas it is alleged that George Q. Cannon, of Utah, has taken oaths inconsistent with the citizenship of the United States and with his obligations as Delegate in this House, and has been, and continues to be, guilty of practices in violation and defiance of the laws of the United States: Therefore,

Resolved, That the credentials of said Cannon and his right to a seat in this

House as a Delegate from Utah be referred to the Committee on Elections, and that said Cannon be not admitted to a seat in this House previous to a report from said committee.

It will be noted that at this time there was no law declaring ineligible a person guilty of polygamous practices.

A short discussion followed, participated in by Mr. Butler, of Massachusetts, Mr. G. F. HOAR, Mr. Clarkson N. Potter, and Mr. Maynard.

Mr. Cox took the position that Mr. Cannon had the prima facie right to his seat.

Mr. Butler said:

I do not believe that when a man comes here with proper credentials from the proper authority it has ever been the custom of the House, or ever ought to be, that he shall not have prima facie right to his seat, because the moment we break away from that rule, then in high party times the House could never be organized.

If Mr. Butler meant by this the situation where the legal or constitutional qualifications of the claimant were not questioned, he was probably right. But if he meant by that that in every case the credentials exhibited not only his election, but his qualifications, and that he was entitled to his seat, then he had not only forgotten very recent precedents in the House, but also his own position, especially the position he took in the Connor case, to which I have just referred.

Mr. HOAR said:

This precise case came up in the last House in the case of Mr. Clark, of Texas. His credentials were referred to the Committee on Elections, and that committee reported that the only question for the House to consider was whether Mr. Clark's credentials were regular in form and whether the officer certifying them was entitled by the law of the State and usages of the House to give him those credentials.

Mr. HOAR'S parallel is a very unhappy one. Clark's certificate was in perfect form; there was no question of ineligibility or personal disqualification. It is a question solely of election and returns.

Mr. Potter said:

There is no question about certificates presented in this case. The resolution of my colleague goes, by way of objection to this gentleman being sworn in, upon the ground that he is guilty of certain practices contrary to the laws of the United States.

Now, the difficulty with my colleague's objection is that the statute has prescribed certain qualifications for the office of Delegate from that Territory, but among those qualifications is not innocency in respect to practices to which my friend alludes.

We had that precise question in the Forty-first Congress, when a gentleman from Virginia was charged with disloyalty and other offenses, and it was agreed, almost without a dissenting voice upon this side of the House, that this House had no voice to consider or determine, as a prerequisite to admission, whether or not he had been guilty of those or any other offenses, provided he came here with the constitutional requirements in reference to his qualifications.

So we find Mr. Potter admitting that want of constitutional qualifications will bar a man at the threshold, and surely a valid legal disqualification will do the same.

But Mr. Potter's reference to the Virginia case was no happier than Mr. HOAR'S in the Texas case.

In the Virginia case referred to the House refused to permit the swearing in of members objected to on the ground of disloyalty until the charge had been examined either by the House or the Committee on Elections.

Mr. Maynard said:

There is another question in connection with this case to which I desire to call attention; it is that this resolution is introduced with a preamble which asserts certain propositions to be facts. We have no evidence to that effect;

we have no documents presented. The mover of the resolution has made no statement upon his own authority or otherwise, and it seems to me that it would be very rash for us to assume the truth of those statements, and to act upon them so far as to prevent the swearing in of this Delegate. It is from that aspect of the case that I am prevented from making the motion that I first thought of making—to refer the resolution to the Committee on Elections.

I think it very unsafe to adopt a resolution or any other proceeding in this House reflecting upon a member of the House unless we first have some ground laid, either by documentary evidence introduced or by statements made by the gentleman who introduced the proposition upon his own authority and responsibility.

The House discussed the question and tried it out. So, properly, Mr. Merriam's resolution was laid on the table.

At the time when the objection was made to Mr. Cannon, of Utah, the Edmunds law was in the womb of the future. There was no statutory disqualification, and Mr. Cannon came only as a Delegate. But later on, Mr. Speaker, George Q. Cannon, of Utah, came to the bar of this House. He did not chance to hold a certificate, although he ought to have had a certificate; but if he had come to the bar of the House, he would have been stopped there and, as I gather from the sentiments of that Congress, he would have been held there and not permitted to take the oath, for when the case came up for consideration in his contest against Campbell, in the following May, only six weeks after the Edmunds law was passed, George Q. Cannon, with an incontestable right to a seat as a Delegate on the floor of this House, save that he was a polygamist, was denied a seat because of his polygamy. [Applause on the Republican side.]

There was no ground, claim, or pretense of right to keep him out save that he was a polygamist. Mr. Speaker, we talk about letting this man in and then, perchance, putting him out. I take the liberty to repeat what was repeated before on the floor of this House on a similar occasion, the lines put into the mouth of Colonel Titus, more than two hundred years ago, when Charles II was battering at the doors of Parliament and the liberties of the people, demanding entrance:

> But Titus said, with his uncommon sense,
> When the Exclusion bill was in suspense,
> I hear a lion in the lobby roar;
> Say, Mr. Speaker, shall we shut the door
> And keep him there, or shall we let him in
> To try if we can put him out again?

[Applause.]

* * * * * * *

Mr. TAYLER of Ohio. Mr. Speaker, I demand the previous question on the resolution and the substitute.

The previous question was ordered

The SPEAKER. The question is on the adoption of the amendment offered by the gentleman from Tennessee as a substitute.

The question was taken; and on a division (demanded by Mr. RICHARDSON) there were—ayes 59, noes 247.

So the amendment was rejected.

The SPEAKER. The question recurs on the adoption of the original resolution offered by the gentleman from Ohio [Mr. TAYLER].

Mr. DALZELL, Mr. GROSVENOR, and several others. The yeas and nays. Mr. Speaker.

The yeas and nays were ordered.

The question was taken; and there were—yeas 304, nays 31, not voting 19.

On motion of Mr. TAYLER of Ohio, a motion to reconsider the last vote was laid on the table.

The SPEAKER announced the appointment of the following committee in accordance with the vote just taken:

Special committee: Mr. TAYLER, Ohio; Mr. LANDIS, Indiana; Mr. MORRIS, Minnesota; Mr. FREER, West Virginia; Mr. LITTLEFIELD, Maine; Mr. MCPHERSON, Iowa; Mr. DE ARMOND, Missouri; Mr. LANHAM, Texas; Mr. MIERS, Indiana.

FINDING OF FACTS BY THE COMMITTEE.

We find that Brigham H. Roberts was elected as a Representative to the Fifty-sixth Congress from the State of Utah and was at the date of his election above the age of 25 years; that he had been for more than seven years a naturalized citizen of the United States and was an inhabitant of the State of Utah.

We further find that about 1878 he married Louisa Smith, his first and lawful wife, with whom he has ever since lived as such, and who since their marriage has borne him six children.

That about 1885 he married as his plural wife Celia Dibble, with whom he has ever since lived as such, and who since such marriage has borne him six children, of whom the last were twins, born August 11, 1897.

That some years after his said marriage to Ceclia Dibble he contracted another plural marriage with Margaret C. Shipp, with whom he has ever since lived in the habit and repute of marriage. Your committee is unable to fix the exact date of this marriage. It does not appear that he held her out as his wife before January, 1897, or that she before that date held him out as her husband, or that before that date they were reputed to be husband and wife.

That these facts were generally known in Utah, publicly charged against him during his campaign for election, and were not denied by him.

That the testimony bearing on these facts was taken in the presence of Mr. Roberts, and that he fully cross-examined the witnesses, but declined to place himself upon the witness stand.

January 23, 1900.

REPRESENTATIVE-ELECT FROM UTAH.

Mr. TAYLER of Ohio. Mr. Speaker, I call up the resolution from the committee on the case of Brigham H. Roberts.

Mr. SPEAKER. The Clerk will report the resolution offered by the gentleman from Ohio, chairman of the Special Committee on the Roberts Case.

Mr. TAYLER of Ohio. I desire to say, Mr. Speaker, that the minority and the majority of the committee have agreed that the vote be taken on the substitute and on the resolution on Thursday next at half past 4 o'clock, and that in the meantime the discussion continue, to be under the control of myself and the gentleman who represents the minority.

Mr. BAILEY of Texas. Mr. Speaker, it is impossible in this part of the House to understand what the gentleman from Ohio is saying.

The SPEAKER. The question will be restated. The House will be in order, and gentlemen will please resume their seats. Will the gentleman from Ohio [Mr. TAYLER] restate his proposition?

Mr. TAYLER of Ohio. The arrangement between the minority and the majority of the committee is that a vote be taken on Thursday at half past 4 o'clock on the substitute offered by the minority of the committee, and if that be lost, upon the resolution offered by the majority; that the debate continue from now until that hour, and that the previous question be considered as ordered upon the resolution and the substitute. I ask unanimous consent for the carrying out of that arrangement.

The SPEAKER. The gentleman from Ohio [Mr. TAYLER] states that an agreement has been reached between the majority and the minority of the committee in the Roberts case, whereby it is proposed to have general debate until 4.30 on Thursday next, when a vote will be taken, first upon the substitute, and if lost, then upon the original resolution, and that the previous question be considered as ordered upon both the original resolution and the substitute. Is there objection to this proposition?

Mr. LACEY. I object, unless opportunity be given to offer the following amendment——

Mr. TAYLER of Ohio. Mr. Speaker, objection is made. I think we will proceed, and I will move the previous question at the proper time.

Mr. LACEY. I think perhaps the gentleman will not object to this proposition——

Mr. TAYLER of Ohio. Mr. Speaker, I do not consent to it.

The SPEAKER. The gentleman from Ohio objects, and objection is made to his request. The gentleman from Ohio is recognized.

Mr. BAILEY of Texas. Does the gentleman from Ohio object before he knows what the proposition of the gentleman from Iowa is?

Mr. TAYLER of Ohio. If there is a desire on the part of the House that any amendments should be offered and we have opportunity to discern what they are and what they mean——

Mr. BAILEY of Texas. I ask that the proposed amendment be read.

Mr. LACEY. Let it be read for information.

Mr. TAYLER of Ohio. But the gentleman from Iowa has objected.

Mr. LACEY. I have not. My objection was conditional, and my request is that a third proposition not involved in the two propositions here may be pending. Perhaps when my friend hears it he will consent to it.

Mr. TAYLER of Ohio. I may consent to it, but I will not consent to it at this moment. It has not been proposed to the committee. No member of the committee, as far as I know, knows what it contains, and we are certainly not giving consent to a proposition about which we are not informed.

Mr. LACEY. Why not let the House know what it contains?

Mr. TAYLER of Ohio. There is a way in which we might have been informed, Mr. Speaker.

Mr. LIVINGSTON. I suggest to the gentleman from Ohio that the proposition be read for information.

The SPEAKER. The matter in order now is the reading of the resolution proposed by the majority of the committee. The Clerk will read.

The Clerk read as follows:

Resolved, That under the facts and circumstances of this case, Brigham H. Roberts, Representative-elect from the State of Utah, ought not to have or hold a seat in the House of Representatives, and that the seat to which he was elected is hereby declared vacant.

Mr. TAYLER of Ohio. I ask for the reading of the resolution offered by the minority of the committee.

The Clerk read as follows:

Resolved, That Brigham H. Roberts, having been duly elected a Representative in the Fifty-sixth Congress from the State of Utah, with the qualifications requisite for admission to the House as such, is entitled, as a constitutional right, to take the oath of office prescribed for members-elect, his status as a polygamist, unlawfully cohabiting with plural wives, affording constitutional ground for expulsion, but not for exclusion from the House.

And if the House shall hold with us and swear in Mr. Roberts as a member, we shall, as soon as recognition can be had, offer a resolution to expel him as a polygamist, unlawfully cohabiting with plural wives.

Mr. LACEY. I offer the amendment which I send to the Clerk's desk.

Mr. TAYLER of Ohio. I have the floor.

The SPEAKER. The gentleman from Ohio has the floor.

Mr. LACEY. The gentleman yielded the floor for the amendment which has just been read.

The SPEAKER. Does the gentleman from Ohio yield for another amendment?

Mr. TAYLER of Ohio. I do not.

The SPEAKER. The gentleman from Ohio objects, and is recognized.

Mr. TAYLER of Ohio. Mr. Speaker, I may be pardoned for a word personal to myself in this relation. Some weeks ago the duty was laid upon me to make an investigation of the law relating to the rights of the member-elect from Utah, and I undertook that work. I did so without prejudice in any respect, and I was not aware, nor am I now, that I was then moved by any so-called emotional impulse respecting what the member-elect from Utah is supposed to represent.

I started in that investigation with the opinion that the proper course for the House would be to admit the member-elect from Utah to his seat, and then, if his life or his conduct had been such as to justify it, that we should expel him. But when I progressed

with my investigation, as largely judicial as any investigation ever was, I came to the conclusion that under the facts of the case as then presented to me this House would make itself ridiculous before the eyes of the world if it adopted that method.

The committee have found that Brigham H. Roberts is, and has been for many years, a polygamist, in defiant practice of the habit and condition, with full knowledge of the laws of the land, and that he is in that condition, as we believe, to-day; and as recently as last month declared that he would not give up the relations which he said he had taken before the law spoke, although he knew that the law had spoken; he claims for himself that it did not speak for him.

Mr. Chairman, the members of this committee entertain varying views, not because of any larger fund of knowledge or any different degree of mental force they possess, but rather on account of what I may call their intellectual temperament. Every member has reached an unbiased and deliberate conclusion, unaffected by any party feeling or any public clamor. Every man goes into a scientific and philosophical investigation with some certain intellectual bent, though unaffected by any kind of prejudice respecting the subject of inquiry. It is often necessary that we understand what that bent is.

The microscope is useful and often necessary, but the microscope must be laid aside when the process of synthesis and generalization begins. We must not imagine that we survey the whole area of related facts, when we shut ourselves up in the valley, or lose ourselves in the forest. I will be pardoned, therefore, if I present a few general observations from as high a point of view as I can reach, designed to clear the atmosphere and widen the scope of vision. We may then the more justly and correctly appraise the more specific observations that are to follow.

Chief Justice Waite, in the Reynolds case, in 1878, speaking of the claim that polygamy was justified as a religious practice, said:

> To permit this would be, in effect, to permit every citizen to become a law unto himself. Government can exist only in name under such circumstances.

And Mr. Justice Matthews, in the Ramsey case, in 1884, declares in substance that—

> A free, self-governing commonwealth is founded on the idea of the family as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony, and that all political influences are to be withdrawn from those who are practically hostile to its establishment.

If we are to attach any importance to these fundamental observations, we must declare, no matter what moral question may be involved, that this case presents, in bold relief, a question of governmental life the basis of which is law.

This is a representative Government. It springs from the people, from the people who make the law, and their representatives are such because they are believers in the law and subject to the law, and as they can not stand for defiance of any law, so much the more must they stand as the respecters of and obedient to such laws as have proceeded from the people, at the people's initiative. Now and then we have a law which springs from the united voice of a united people as an expression of the civilizing force in which practically all of them believe and which is necessary to the existence of that civilizing force.

Of the more than 75,000,000 American citizens all but the merest handful believe, and believe with a mighty fervor, in the kind of

commonwealth which Justice Matthews declares is founded on the marriage relation existing for life between one man and one woman. That idea has been for many years crystallized in solemn and deliberate law, whose principle and form have been approved by the highest judicial authority.

These propositions are fundamental and self-evident. They lie at the root of things. They are the bed rock upon which constitutions rest. They precede constitutions. Constitutions assume their preexistence and perpetual existence. They are institutional. If the Federal Constitution had explicitly declared that all persons should be eligible for Representative in Congress who denied that the Constitution was the supreme law of the land, that Constitution and the government which it sought to create could not have endured a single day. It follows that if such specific declaration could not have been made, it can not be implied.

Neither the presence nor the absence of certain words in the instrument can imply a certain meaning if it is impossible that such meaning could have been expressed. If the claimant to this seat is eligible, he is eligible because the Constitution so makes him, either by its express language or because it is necessarily implied. The words "necessary implication" mean—and I ask the careful attention of the House to this—the words "necessary implication" mean that if the framers of the Constitution had had in mind the particular exigency to which the words applied, they would, if the proposition was approved, have written into the Constitution the words that are necessarily implied.

For example, if we say that under the Constitution, as it now stands, there can be no property qualification for Representative in Congress, then we read into the clause respecting qualifications the words "and no person shall be rendered ineligible by any property qualification."

If the constitutional provision by implication, which for the sake of this discussion I admit, means that no educational qualification shall be required, then when we get down to the last analysis and demonstrate the correctness of that proposition, we read into the Constitution the statement that no educational qualification shall be required of any candidate for Representative in Congress.

The Constitution says:

> This Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land.

If the member-elect from Utah is eligible to be a Representative in Congress, then for the purpose of his case we must read into the Constitution other words which are now said to be implied, so that it will read: "No person shall be a Representative in Congress unless he shall have attained to the age of 25 years and been seven years a citizen of the United States and who shall not when elected be an inhabitant of that State in which he shall be chosen, provided that no person shall be ineligible to a seat as such Representative, although in form and substance, in word and act, in life and practice, he defies the Constitution and the laws and denies their validity and supremacy."

It matters not whether this proviso be attached to the clause referred to or to some other, it must be written into the Constitution somewhere if the claimant is eligible.

Thus stands the case. If the minority be right, the framers of the American Constitution, if they had foreseen the Roberts inci-

dent with its defiance of the Constitution and the law, and its denial of their validity and supremacy as to him, would have said, "Brigham H. Roberts is eligible and must take his seat." There is no other rule by which to determine what the makers of the Constitution mean than to ask what would have been their disposition of such a case; and if what they would have done is absolutely free from doubt, we can understand what it is that is implied, though not expressed in words.

The majority of the committee are fixed in their conviction that in view of the status of Brigham H. Roberts, not because of any moral question that may be involved, but because of the question of governmental right involved, in view of his defiant violation of law, in view of his denial of the validity and supremacy of the law of the land, has no right to take his seat in this body, and should be excluded therefrom.

The minority, on the other hand, attaching more value to the husk than to the ear, seeming to conceive that the shadow is to be more taken care of than the substance, declare that we must let him go through the hollow form, the sacred form of taking an oath, and then expel him; to rob him of that which is substantial, but that we must not deprive him of that which is a mere shadow. They say, "You may come up and enter our front door, in order that we may kick you out of the back door, but we cheerfully declare, with the Constitution before us, that we can not kick you down the front steps."

We believe that that is absolutely untenable as a proposition of law and absolutely unsupported by precedents.

I want to make these preliminary statements respecting that. First, upon the doctrine of exclusion.

The language of the constitutional provision, the history of its framing in the Constitutional Convention, and the context clearly show, whatever else may have been true, that it did not intend to prevent this disqualification for crime or for defiance of the Constitution and the laws. The overwhelming authority of text-book writers on the Constitution and of judicial declarations on the subject harmonizes with this view. The House of Representatives, in all the years of its existence, has never denied that it had the power and the right to exclude.

In many instances it has excluded for disloyalty and for crime. In 1862 Congress passed the test-oath act, which in effect disqualified hundreds of thousands of American citizens, and thousands of Representatives in this body went to the bar of the House under a disqualification that was not removed until they took the test oath, an oath substantial in its character and superadded to the constitutional oath. And this very House in 1869 adopted a general rule of order providing that no person should be sworn in as a member against whom the objection was made that he was not entitled to take the test oath.

On the proposition of expulsion I present these general observations: That the ablest lawyers from the beginning of the Government down to this case, but of course not including it, have insisted that neither the House of Representatives nor the Senate has the right to expel a man unless the thing for which he was expelled occurred in connection with his election or while he was a member, and was inconsistent with his trust or duty as a member.

I lay that proposition down as absolutely sound and as not contradicted anywhere; and both Houses of Congress have in many instances refused to expel members where the proof of guilt was

absolutely clear, because the acts complained of were unrelated to the members as such, because the acts complained of were not inconsistent with the trust and duty of the member as such.

Neither House has ever expelled a member for any other cause. *So I say this here and now: To exclude is to be in harmony with principle and precedent; to expel is to do violence to principle and precedent. There is no precedent in the House against exclusion. There is no precedent in the American Congress for expulsion under such circumstances as exist here.*

Three reasons are asserted why this man should not be permitted to enter the House of Representatives:

First, because of his violation of the Edmunds law and the disqualification created thereby.

Second, independent of any statutory ineligibility, independent of any joint action of the two Houses in the passage of a law, but because of the inherent power of the House, by that inherent power which in all cases of exclusion has been invoked—and the House has never excluded for any other reason except for that which it itself declared, independent of any statute law—that this man was a defiant violator of law; his declarations, words, and acts that he was above the law, that the law did not speak to him, in the very necessity of things, make him ineligible; and

Third, because the State of Utah was admitted into the Union under the express understanding that polygamous practices were at an end and would not be renewed. And now it sends as its Representative the most conspicuous example, the most conspicuous practitioner of the very thing the abandonment of which was the condition precedent to its admission into the Union.

This question, then, meets us at the threshold: Does the constitutional provision naming qualifications for members of Congress preclude the imposition of any other kind of disqualification?

Must it be said that the constitutional provision, phrased as it is, really means that every person who is 25 years of age, and who has been for seven years a citizen of the United States, and was, when elected, an inhabitant of that State in which he was chosen is eligible to be a member of the House of Representatives and must be admitted thereto, even though he be insane, or disloyal, or a leper, or a criminal?

Is it conceivable that the Constitution meant that crime could not disqualify? The whole spirit of government revolts against such conception.

I want to distinguish between that qualification which is of the character of age, citizenship, and inhabitancy, such as property and education, and those disqualifications which arise out of the criminal or wrongful practices of an individual who willingly puts himself within the prohibited class.

I say this: Whatever general statements may have been made, no commentator on the Constitution, no court, and neither House of Congress has ever questioned the propriety of the distinction between disqualification arising from improper life or criminal practices and qualifications within the usual meaning of that word.

In our opinion the law is correctly stated, and as comprehensively as this case needs to state it, in Burgess in his work on Political Science and Constitutional Law, where he says:

> I think it certain that either House might reject an insane person or might exclude a grossly immoral person.

Now let us look for a moment at where the claimant himself

stands. What is he? What picture does he present as he stands at the bar of the American House of Representatives?

In 1862 Congress first passed a law making the act of polygamous marriages unlawful; but it did not make the practice of polygamous living unlawful. The Mormons claimed that law was unconstitutional, because it was an infraction of their right of religious worship. The Supreme Court, in the Reynolds case, in 1878, declared that law valid in all respects, and Chief Justice Waite in a luminous opinion voiced the sense of modern civilization in his characterization of polygamy. I quote as follows:

> Polygamy has always been odious among the northern and western nations of Europe, and until the establishment of the Mormon Church was almost exclusively a feature of the life of Asiatic and of African people.
>
> By the statute of James I the offense was made punishable by death.
>
> It is a significant fact that on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration of the bill of rights that "all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience," the legislature of that State substantially enacted the statute of James I, death penalty included, because, as recited in the preamble, "it hath been doubted whether bigamy and polygamy be punishable by the laws of this Commonwealth." From that day to this we think it may safely be said there never has been a time in any State of the Union where polygamy has not been an offense against society, cognizable by the civil courts and punishable with more or less severity.

And, continuing the quotation:

> Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people to a greater or less extent rests. Professor Lieber says polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle can not long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound.
>
> Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

So also in Murphy *vs.* Ramsey (114 U. S., 45). Construing the Edmunds Act, Justice Matthews says:

> Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the coordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostile to its attainment.

How cogent and prophetic are these words. How applicable to this situation, that all political influence ought to be withdrawn from those practically hostile to the establishment of a "commonwealth on the basis of the idea of the family as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony."

There was no machinery for enforcing the act of 1862 until 1882, when Congress passed what is known as the Edmunds law. This act defined and punished bigamy and polygamy in the same terms as the act of 1862, but also punished unlawful cohabitation, and declared ineligible for office any person who maintained the

status of a polygamist or who cohabited with more than one woman.

Section 8 of that act is as follows:

> That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to, or be entitled to hold, any office or place of public trust, honor, or emolument in, under, or for such Territory or place, or under the United States.

This law had not only the force of a public law, but it was the outcome of years of agitation and reflection. It crystallized the sober sense of the American people; it represented the settled views of our wisest and most conservative statesmen, and later received the stamp of approval from the Supreme Court of the United States in many well-considered cases, and was made the subject of felicitous proclamation by the President.

Prior to 1882 the claimant to this seat married his first wife. About 1885, after the passage of the Edmunds law, after the Supreme Court had declared that law valid in all of its parts, while the Territory of Utah was fairly ringing with the blows of that act, Brigham H. Roberts married a second or plural wife, one Celia Dibble by name. With her he has lived ever since. She has borne him six children, the last of whom were twins, born in 1897. This woman he married with full knowledge of the law, openly, publicly, notoriously holding her out as his wife and rearing children by her.

This second wife he married in defiance of the Edmunds law. He declared by his act that he recognized no binding rule upon him of a law of Congress; he declared by it that he recognized a higher law. The Congress of the United States was to him an object of contempt. The Supreme Court of the United States might declare the law for others, but not for him. He laughed at its futile decrees and spurned its admonitions. The Executive which had declared in solemn messages its gratification that polygamy seemed gone forever he defied and despised. Of what consequence to him were laws of Congress and declarations of the highest court and proclamations of Presidents as against his sensual interpretation of a sensual doctrine?

And all the time the Edmunds law declared not only polygamy, but cohabitation with more than one woman unlawful. Roberts not only bigamously married a second wife, but he persisted in violating and defiantly trampling under foot every other provision of the act.

But he had not sufficiently shown his contempt, his utter and absolute contempt for the American people and for this body. He defied it by word and by act, and in order to show how utterly he defied and despised the national authority and the American Congress, a little while later he married a third wife. We do not know whether he married her before 1897 or not. He held her out as his wife in 1897, and not before. And if that be about the time when he married her, he married her after Utah became a State and after the constitutional prohibition of polygamous marriages.

The claim is made, not by any sworn testimony, that he married her prior to the manifesto of 1890, which prohibited further plural marriages in the church.

If that be true, he managed to marry a third wife within a year

after he got out of the penitentiary for marrying a second wife. This is the gentleman whose rights under the American Constitution are so sacred that he must be invited before the Speaker of the House and asked to hold his hand up before high Heaven and swear to obey the Constitution and laws which in his life and practice he declares that he defies and whose supremacy he denies.

The amnesty proclamations of 1893 and 1894 never embraced him. There was never a moment when its provisions were complied with by him. There has never been a moment since he married Celia Dibble down to the present moment when he has not been a persistent, notorious, defiant, demoralizing, audacious violator of every provision of the State and Federal law relating to polygamy and its attendant crimes. And this is the man who seeks admission to this body.

It was declared in the Kentucky cases, and in the Thomas case in the Senate, and in the test-oath act of 1862, that disloyalty created ineligibility; that fidelity to the Constitution was a necessary qualification to membership in this body. What is loyalty? It is faithfulness to the sovereign or the lawful government. A mere violator of the law may not necessarily be disloyal. One may violate the law and still recognize the sovereign and the lawfulness of the government. His only concern may be that he shall not be found out and punished. But that man is surely disloyal, and in the fullest sense disloyal, when by his words, his acts, and his persistent practices he declares unequivocally in this wise:

"You have solemnly enacted certain laws; you have crystallized into statute the will of the sovereign people. I bid defiance to your law. I will not recognize it. I here and now before your very eyes do the things you say I shall not do. I recognize a higher law than your man-made law—no law of yours can relieve me from the obligations which I thus take in defiance of your enactments. The only thing I promise not to do is to take a fourth wife."

The case of a bribe taker, or of a burglar, or of a murderer is trivial, is a mere ripple on the surface of things, compared with this far-reaching, deep-rooted, audacious lawlessness.

What was the case of Whittemore, who was excluded, as hereafter set out? He had not been convicted of any crime, but a committee had found that he had sold a cadetship. He did not pretend that he was wiser or greater than the people, or that he had the right to sell cadetships and was above the law. The acts of Roberts are essentially disloyal. They deny the sovereign; they repudiate the lawful government. Look at them from whatever point you will, they are subversive of government. They do not merely breed anarchy, they are anarchy.

Now, what are the duty and the power of the House? The Constitution has a provision which I have heretofore read in the hearing of the House, declaring the qualifications for Representatives in Congress. I assert that that is not exclusive in so far as it prevents the House from asserting any ground of disqualification which goes to the vitality of this body as such, or which in the common judgment of mankind ought always to exclude from the legislative body a person who is thus charged.

I have not the time to go fully over the reasons that have brought conviction to my mind and to the minds of my colleagues of the majority, but I shall refer to them to such an extent as I think will convince this House.

Three methods present themselves by which to test the soundness of this view:

First. On principle, and this involves—

(1) The nature of the legislative assembly, and the power necessarily arising therefrom.

(2) The express language of the constitutional provision.

(3) The reasons for that language.

(4) Its context and its relation to other parts of the instrument.

(5) The obvious construction of other portions of the same instrument necessarily subject to the same rule of construction.

Second. The text-books and the judicial authorities.

Third. Congressional precedents. These are of two classes—

(1) Action respecting the rights of individual members.

(2) Acts of Congress and general resolutions of either House.

As to the first proposition, what is the argument on principle? I think it will be undoubted that every legislative body has unlimited control over its own methods of organization and the qualifications or disqualifications of its members, except as specifically limited by the organic law. I do not think that this proposition needs amplifying; it is axiomatic. It is apparent that every deliberative and legislative body must have supreme control over its own membership except in so far as it may be specifically limited by a higher law. There is a distinction to be drawn between the legislative power of a legislative body and its organizing power, or those things which relate to its membership and its control over the methods of performing its allotted work. That is to be distinguished from the legislative power to be expressed in its final results.

When our Constitution was framed there was practically no limit to the right and power, in these respects, of the English Parliament. Such power is necessary to the preservation of the body itself and to the dignity of its character. In England it was at one time admissible to permit the admission into the House of Commons of minors, of aliens, and of persons not inhabitants of the political subdivision in which they were elected. To this day it is well known that an inhabitant of London may be elected by a Scotch constituency, and a member has been elected by more than one constituency to the same Parliament.

The framers of the Constitution, familiar with these facts, proposed to prevent their happening in this country. They knew also that a similar latitude of choice had been exercised in the original colonies and in the States of the Federation, and it was proposed to put a stop to it so far as Congress was concerned. A very luminous argument was made on this subject by John Randolph in the House of Representatives in 1807.

I quote as follows from his remarks:

> If the Constitution had meant (as was contended) to have settled the qualifications of members, its words would have naturally run thus: "Every person who has attained the age of 25 years and been seven years a citizen of the United States, and who shall, when elected, be an inhabitant of the State from which he shall be chosen, shall be eligible to a seat in the House of Representatives." But so far from fixing the qualifications of members of that House, the Constitution merely enumerated a few disqualifications within which the States were left to act.
>
> It is said to the States: You have been in the habit of electing young men barely of age; you shall send us none but such as are five and twenty. Some of you have elected persons just naturalized; you shall not elect any to this House who have not been some seven years citizens of the United States. Sometimes mere sojourners and transient persons have been clothed with legislative authority. You shall elect none whom your laws do not consider as inhabitants.

In pursuance of the idea in the mind of the framers of the Constitution we have the peculiar words, "No person shall be a Representative who shall not have attained," etc. How happy, indeed, are these words if we give them precisely the force and meaning for which we contend. How unhappy and how misleading, how impossible, in fact, to the masters of the English language who wrote them if they were intended to exclude all other possible requirements or disqualifications. We might admit such construction if suitable language was difficult to find or frame; but note how easily such a purpose could have been served in fewer words and with unmistakable meaning—thus: "Any person," or "a person," or "every person may be a Representative who shall have attained the age of 25 years," etc.

The provision seems to be worded designedly in the negative, so as to prevent the suspicion that it was intended to be exclusive, and so as to prevent the application of the rule, "the expression of one thing is the exclusion of another." The immediately preceding clause is affirmative, and says: "The electors in each State shall have the qualifications," etc. With some show of propriety it can be claimed that this provision is exclusive. It at least does not have the negative form to condemn such construction.

Story says (Constitution, section 448):

> The truth is that in order to ascertain how far an affirmative or negative proposition excludes or implies others we must look to the nature of the provision, the subject-matter, the objects, and the scope of the instrument. These, and these only, can properly determine the rule of construction. There can be no doubt that an affirmative grant of powers in many cases will imply an exclusion of all others.

It is a notable fact that in the first draft of this constitutional provision which provides for qualifications of Representatives in Congress the language was affirmative and positive, and that when it was finally presented for adoption it appeared in the form in which we now find it.

The slight contemporaneous discussion in the Constitutional Convention was upon the provision in the affirmative form. Why was it changed to the negative? Surely not for the sake of euphony. And certainly not to make it more explicitly exclusive.

In the report of the committee of detail, submitting the first draft of the Constitution, this section read in the affirmative and as follows:

> Every member of the House of Representatives shall be of the age of 25 years at least; shall have been a citizen of the United States for at least three years before his election, and shall be at the time of his election a resident of the State in which he shall be chosen.

In the discussion Mr. Dickinson opposed the section altogether, expressly because it would be held exclusive, saying he—

> was against any recitals of qualifications in the Constitution. It was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the Legislature from supplying omissions.

Mr. Wilson took the same view, saying:

> Besides, a partial enumeration of cases will disable the Legislature from disqualifying odious and dangerous characters.

The next day after this discussion, and when the clause respecting age, etc., had, in its general sense, been informally approved, a proposed section respecting a property qualification was discussed. Mr. Wilson said (Madison Papers, volume 5, page 404) that he thought "it would be best, on the whole, to let the section go out; this particular power would constructively exclude every other power of regulating qualifications." What did Mr. Wilson mean

if the result of the discussion in which he participated on the preceding day was to "constructively exclude every other power of regulating qualifications?"

In view of the objections urged by Dickinson and Wilson and their opinions as to the construction that would result and the consequences thereof, the conclusion seems reasonable, if not absolutely irresistible, that the change from the affirmative to the negative form was intentionally made, and with the very purpose of obviating such objections, and hence that in being negatively stated it was considered by the Convention that the particular qualifications mentioned would not be exclusive and would not render impossible the "disqualifying odious and dangerous characters" and would not prevent "supplying omissions."

This section was finally reported and adopted in the negative form in which it now appears. The report of the committee seems to have been elaborately discussed.

Where do we find ourselves in such a case as this? Suppose that Brigham H. Roberts, instead of being charged with polygamy, was charged with treason, not constructive treason, but actual treason, and suppose that a witness appeared before the committee—a credible witness, whose testimony was undisputed—who testified that he had seen Brigham H. Roberts wage war against the United States in the Spanish war, giving aid and comfort to Spain, not constructively, but actively; and suppose that Roberts appeared himself before the committee and said, "All that this man says is true; I did wage war against the United States; I did give aid and comfort to its enemies in time of war against a foreign foe, and I glory in it."

Now, in that state of facts the law could not lay its hand upon him for the crime of treason, for the Constitution provides that no person shall be convicted of treason except upon the testimony of two witnesses to the same overt act or by confession in open court. So that under the state of facts thus presented he could not be convicted of treason.

Suppose he was here with a certificate of election from a great State and demanded admission.

There, then, we have a spectacle, the spectacle of a man not amenable to the punishment for treason, glorying in his treason as between this country and a foreign foe, but having the constitutional qualifications for Representative in Congress; and our friends of the minority will tell you on the floor of this House, if they are asked, that Mr. Roberts, thus spitted before the committee and the House, must be sworn in, in order that the House may thereafter expel him. I say that the House would thus find itself powerless to protect itself and its own dignity and be made ridiculous before the eyes of the whole world.

Another illustration. Suppose that on the 1st day of January, 1899, two months after his election and two months before his term as a Representative should commence, he had been convicted of the crime of bigamy or of adultery, either one of which is a felony under the statutes of Utah, for an offense, we will presume, committed prior to his election, so that it can not be charged that after his election he voluntarily put himself in that position, and he was tried, convicted, and sentenced to the penitentiary for a term of two years; and it so occurs that his term of imprisonment should expire on the 3d day of March, 1901, the day before his term as Representative in Congress expires. Suppose he presented himself on the 3d day of March, 1901, no action having

been previously taken in his case, would the House have to admit him, or would not the proper proceeding be, while he was still in the penitentiary for such an offense, for the House to declare his seat vacant; that he ought not to have or retain a seat in the American House of Representatives?

Suppose another case: That in the midst of the organization, and before being sworn in, a member-elect should so indecently and outrageously conduct himself before the eyes of the House and the assembled multitude as to demand and justify expulsion if he had so conducted himself after he had been sworn in. What would the House do? In the midst of his outrageous misconduct must the House, with tender persuasiveness, beg him to honor it by being sworn in so that he may be turned out, or would it refuse to swear him in and proceed to declare his seat vacant? Could the strictest constructionist of the Constitution deny that the Constitution was substantially complied with if he was excluded by a two-thirds vote, even if he did not assent to our view in all respects?

Suppose that the claimant to this seat, while enjoying through the courtesy of the House the privilege of the floor, should declare his contempt for this body and for the Government; that he respected none of its decrees or the laws of the land as having any binding force upon him; that if he became a member of the House he should become so merely for the purpose of obstructing its business and to tear down the Government. What would the House do? Swear him in that it might have the ineffable privilege of turning him out? Or would it declare him unfit to have a seat in that body and declare his seat vacant?

As Judge Shaw says in Hiss *vs.* Bartlett (3 Gray, 473), "It is necessary to put extreme cases to test a principle."

So much for illustrations upon that question. Look, now, at the last paragraph of Article VI of the Constitution:

> The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution.

Here is an affirmative declaration that a certain oath shall be administered to certain officials. If the theory of exclusion is applied to the qualification clause as to Representatives, it must be applied to this clause, and therefore Congress has no power to demand any other oath or superadd to this oath any other provisions.

And yet the very oath we took as members of this House has additional provisions. Congress passed also the test-oath act in 1862, making vital additions to the constitutional oath, and, indeed, adding a new ground of disqualification for members of Congress. This act was passed by a large majority, and compelled members of Congress to submit to that oath for many years. Chief Justice Marshall, the great expounder of the Constitution, in the case of McCulloch *vs.* Maryland, declared that "He would be charged with insanity who should contend that the Legislature might not superadd to the oath directed by the Constitution such other oath or oaths as its wisdom might suggest," and the whole opinion in that case is addressed in principle to the very doctrine that is here advocated.

If Congress could add to the constitutional oath, the same theory of construction must permit it to add reasonable qualifications to the requirements for members of the legislative body, at least to the extent of declaring disqualifications which in their nature ought to bar a man from entrance into a great legislative body.

The same clause to which I have just referred has this provision:

> But no religious test shall ever be required as a qualification to any office or public trust under the United States.

If the Constitution had laid down all the qualifications which Congress or any other power had the right to impose it was unnecessary to go on and declare that no religious test should be required. That great instrument is inconsistent in its parts and contradictory of itself if it be true that it meant that no disqualifications should be provided except those named. Nor was it necessary, if the proviso means an oath merely, that such exception should be made, for the preceding words of the paragraph set out the required oath.

The effort to make the negative declaration of minimum qualifications exclusive of all others, whatever the necessities of the House may be, falls to the ground if we admit that the paragraph representing oaths is in the same instrument as that which defines the qualifications of members of Congress.

Let me now proceed with what I have called the text-book and judicial authority.

There is a statement in Story's work on the Constitution to the effect that the clause in the Constitution describing the qualifications for Representatives in Congress would seem to imply that other qualifications could not be added.

Now, whether or not that be sound, these two observations are to be made upon it:

First. That is dismissed in a very few words. Justice Story himself disclaims explicitly in his work that he gives his own opinion as to what the Constitution means, but asserts that he undertakes merely to give the statements of others.

Second. This statement of Judge Story does not at all interfere with the proposition we have laid down—that the power of the House to exclude from its membership a person who is, for instance, disloyal, a criminal, insane, or infected with a contagious disease, is not superadding any qualification within the meaning of Story, such as a property qualification or an educational qualification.

We find, however, that Story's expression, if it means all that is claimed for it by the minority, does not accord with the opinion of other commentators, with the courts, or with the Congressional precedents. We have already quoted, and will not now repeat, what is said by Prof. John W. Burgess, professor of history, political science, and international law, and dean of the university of political science in Columbia College, New York. This ambitious work, published in 1896, must be considered an authority on the subject of constitutional law.

In Pomeroy's Constitutionat Law, third edition, page 138, is the following:

> The power given to the Senate and to the House of Representatives each to pass upon the validity of the elections of its own members, and upon their personal qualifications, seems to be unbounded. But I am very strongly of the opinion that the two Houses together, as one House, can not pass any statute containing a general rule by which the qualifications of members as described in the Constitution are either added to or lessened.
>
> Such a statute would not seem to be a judgment of each House upon the qualifications of its own members, but a judgment upon the qualifications of the members of the other branch. The power is sufficiently broad as it stands. Indeed, there is absolutely no restraint upon its exercise except the responsibility of the Representatives to their constituents. Under it the House inquires into the validity of the elections, going behind the certificates of the election officers, examining the witnesses, and deciding whether the

sitting member or the contestant received a majority of legal votes. The House has also applied the test of personal loyalty to those claiming to be duly elected Representatives, deeming this one of the qualifications of which it might judge.

Pomeroy is discussing the power of the House, not stating what somebody may have said.

Throop on Public Offices, section 73, says:

The general rule is that the legislature has full power to prescribe qualifications for holding office in addition to those prescribed by the Constitution, if any, provided that they are reasonable and not opposed to the constitutional provisions or to the spirit of the Constitution.

Who shall say that the exclusion of Roberts on the ground of polygamy is "opposed to the spirit of the Constitution?"

Cushing (Law and Practice of Legislative Assemblies, page 195, section 477) says:

To the disqualifications of this kind may be added those which may result from the commission of some crime which would render the member ineligible.

What have the courts said on similar propositions? We first have the case of Barker *vs.* The People (3 Cowen) [New York]. In that case it was held that every person not specifically disqualified by the Constitution was eligible to election or appointment to office. In so far as that particular statement goes, it is a denial of the broad right to superadd to the constitutional provision as to qualifications. But that statement, as applied to this case, loses all of its applicability, for two reasons:

(1) Because it was not the question that it had to decide.

(2) Because the judge distinctly and positively declares—and that was the point involved in the case—that notwithstanding that want of power in the Legislature to add to the Constitution qualifications it did have the right to disqualify for crime. He proceeds to say that it might disqualify for crime upon conviction thereof. We apprehend that that is unimportant here, for if the House of Representatives has a right to disqualify for crime it has the power and the right to determine for itself whether the crime was committed, and not to depend upon a judicial conviction. The necessity for a judicial conviction is the more apparent where the person who seeks to take office undertakes to assume an executive office to which he has been elected or appointed, for there may not be any other than the ordinarily constituted court in which to try the question of his guilt of the offense that created his ineligibility.

But it is not the settled doctrine of the law that disqualification for crime must be first adjudicated in the courts. The authorities are, the most of them, against that proposition, and for the sake of convenience we shall refer to them here.

I quote from Royall *vs.* Thomas (28 Gratton (Va.), 130). The syllabus is as follows:

Under the constitution and statute of Virginia a party who has aided and assisted in a duel fought with deadly weapons may be removed from office by proceeding of quo warranto, or if that writ be not in use, by information in the nature of a quo warranto, though he has not been convicted of the offense in any criminal prosecution against him.

The court in this case say that the principal authority relied on in support of the contrary position to that stated in the syllabus is the Kentucky case of Commonwealth *vs.* Jones.

It was held in that case that the clause of the Kentucky constitution imposing the disqualification for office of the offense of dueling is not self-executing, except so far as it prevents those who can not or will not take the requisite oath from entering upon office. It was there held that a citizen willing to take such oath could not be proceeded against for usurpation of

such office until he had been first indicted, tried, and convicted of the disqualifying offense.

It was found, however [said the Virginia court in the Gratton case], on examination, that much of the reasoning of the court in the Jones case turns upon the peculiar phraseology of the Kentucky constitution, in which it is declared that the offender shall be deprived of the right to hold any office, post, or trust under the authority of the State.

The court agreed that if, instead of the words "shall be deprived," the phrase "shall not be eligible" had been used, some of the difficulties attending the argument to show that the provision is self-executing would have been obviated.

In the case of Cochran *vs.* Jones, involving the same question, the board for the determination of contested elections arrived at a very different conclusion upon the same clause of the Kentucky constitution. It will thus be seen that even in Kentucky there is such conflict of opinion in respect to the true interpretation of the constitutional provisions in question as deprives the decision relied on by the defendants of the weight of being considered even persuasive authority.

The provision in the Virginia constitution is as follows: "No person who, while a citizen of this State, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challegne to fight a duel with a deadly weapon, shall be allowed to vote or hold any office of honor, profit, or trust under this constitution."

The court goes on to explicitly hold that previous conviction was unnecessary, arguing it with great force.

The same doctrine is held in Mason *vs.* The State (58th Ohio State), where Mason, who had been elected probate judge of a county in Ohio, had expended more money to bring about his election than the corrupt practices act allowed, and as this act disqualified such person from holding the position to which he was elected, the supreme court held that he could be thus disqualified and kept out of office without conviction.

To the same effect is the case of Commonwealth *vs.* Walter (83 Pennsylvania State, 105).

Proceeding with the enumeration of authorities as to the exclusive effect of the constitutional provision defining or declaring qualifications for office, the next case to which I call attention is Rogers *vs.* Buffalo (123 New York). I quote from page 184:

The case of Barker *vs.* The People (3 Cowan, 686) has been cited by counsel. That case holds the act to suppress dueling, which provided as a punishment for sending a challenge that the person so sending should, on conviction, be disqualified from holding any public office, was constitutional.

The chancellor, in the course of his opinion, said he thought it entirely clear that the legislature could not establish arbitrary exclusions from office, or any general regulation requiring qualifications which the Constitution had not required. What he meant by such expression is rendered clear by the example he gives. Legislation would be an infringement upon the Constitution, he thought, which should enact that all physicians, or all persons of a particular religious sect, should be ineligible to hold office, or that all persons not possessing a certain amount of property should be excluded, or that a member of assembly must be a freeholder, or any such regulation.

But, in our judgment, legislation which creates a board of commissioners consisting of two or more persons and which provides that not more than a certain proportion of the whole number of commissioners shall be taken from one party does not amount to an arbitrary exclusion from office, nor to a general regulation requiring qualifications not mentioned in the Constitution. The "qualifications" which were in the mind of the learned chancellor were obviously those which were, as he said, arbitrary, such as to exclude certain persons from eligibility under any circumstances. Thus a regulation excluding all physicians would be arbitrary. But would a regulation which created a board of health and provided that not more than one physician from any particular school, or none but a physician, should be appointed thereon be arbitrary or unconstitutional as an illegal exclusion from office? I think not.

The purpose of the statute must be looked at, and the practical results flowing from its enforcement. If it be obvious that its purpose is not to arbitrarily exclude any citizen of the State, but to provide that there shall be more than one party or interest represented, and if its provisions are apt for such purposes it would be difficult to say what constitutional provision is violated, or wherein its spirit is set at naught.

And again, on page 188:

It is said that the legislature had no right to enact that a person who shall be appointed to a public office shall have the qualifications necessary to enable him to discharge the duties of such office, nor to provide that the fact that he does possess such qualifications shall be ascertained by a fair, open, and proper examination.

Nothing but the bare oath mentioned in the Constitution can be asked of any applicant for an appointive office is the claim of the appellant. We do not think that the provision above cited was ever intended to have any such broad construction. Looking at it as a matter of common sense, we are quite sure that the framers of our organic law never intended to impose a constitutional barrier to the right of the people through their legislature to enact laws which should have for their sole object the possession of fit and proper qualifications for the performance of the duties of a public office on the part of him who desired to be appointed to such office. So long as the means to accomplish such end are appropriate therefor they must be within the legislative power.

The idea can not be entertained for one moment that any intelligent people would ever consent to so bind themselves with constitutional restrictions on the power of their own Representatives as to prevent the adoption of any means by which to secure, if possible, honest and intelligent service in office. No law involving any test other than fitness and ability to discharge the duties of the office could be legally enacted under cover of a purpose to ascertain or prescribe such fitness. Statutes looking only to the purpose of ascertaining whether candidates for an appointive office are possessed of those qualifications which are necessary for a fit and intelligent discharge of the duties pertaining to such office are not dangerous in their nature, and in their execution they are not liable to abuse in any manner involving the liberties of the people.

And, again, on page 190:

In this case we simply hold that the imposing of a test by means of which to secure the qualifications of a candidate for an appointive office, of a nature to enable him to properly and intelligently perform the duties of such office, violates no provision of our Constitution.

This opinion was delivered by Justice Peckham, now a member of the Supreme Court of the United States.

Another instructive case is that of Ohio ex rel. Attorney-General *vs.* Covington (29 Ohio State, page 102). The opinion is by Judge McIlvaine, one of the ablest and most careful judges that ever sat in the supreme court of Ohio. He says:

The last objection made to the validity of this act is based on section 4 of article 15 of the constitution, which declares: "No person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector."

The question arises under the fourth section of the act (which the court is construing), which provides: "Each member and officer of the police force shall be a citizen of the United States, and a resident citizen for three years of the city in which he shall be appointed, and able to read and write the English language."

There is no claim made that the qualifications prescribed in the act, in view of the nature of the duties to be performed, are unreasonable, or even unnecessary, to the discharge of the duties. The point made is that disqualifications are imposed by the statute which are not imposed by the constitution.

It is apparent that this statute is not in conflict with the terms of this constitutional provision. It does not authorize the appointment of a person who is not an elector. The express provision of the constitution is that a person not an elector shall not be elected or appointed to any office in this State. Now, unless the clear implication is that every person who has the qualifications of an elector shall be eligible to any office in this State, there is no conflict between the statute and the constitution. I do not believe that such implication arises.

There are many offices the duties of which absolutely require the ability of reading and writing the English language. There are many electors who, from habit of life or otherwise, are wholly unfit to discharge the duties of many offices within this State. If the framers of the constitution had intended to take away from the legislature the power to name disqualifications for office other than the one named in the constitution, it would not have been left to the very doubtful implicati on which is claimed from the provision under consideration. The power under the general grant being ample and certain, a statute should not be declared void because in conflict with an alleged implication, unless such implication be clear and indubitable.

We find the same doctrine in the case of Darrow *vs.* The People (8 Colorado, page 417). The syllabus relating to this question is as follows:

The statute designating the payment of taxes as a necessary qualification of membership in the board of aldermen is not in conflict with section 6, article 7, of the constitution.

The provision of that section is as follows:

No person except a qualified elector shall be elected or appointed to any civil or military office in the State.

The court says, on page 420, that it is argued that this provision—

by implication inhibits the legislature from adding the property qualification under consideration. There is nothing in the constitution which expressly designates the qualifications of councilmen in a city or town, and this section contains the only language that can possibly be construed as applicable thereto. But it will be observed that the language used is negative in form—that it simply prohibits the election or appointment to office of one not a qualified elector. There is no conflict between it and the statute. By providing that a supervisor or an alderman shall be a taxpayer the legislature does not declare that he need not be an elector. Nor is the provision at all unreasonable. On the contrary, it is a safeguard of the highest importance to property owners within the corporation.

The right to vote and the right to hold office must not be confused. Citizenship and the requisite sex, age, and residence constitute the individual a legal voter; but other qualifications are absolutely essential to the efficient performance of the duties connected with almost every office. And certainly no doubtful implication should be favored for the purpose of denying the right to demand such additional qualifications as the nature of the particular office may reasonably require. We do not believe that the framers of the Constitution, by this provision, intended to say that the right to vote should be the sole and exclusive test of eligibility to all civil offices, except as otherwise provided in the instrument itself; that no additional qualifications should ever be demanded, and no other qualifications should be imposed.

LEGISLATIVE PRECEDENTS.

I proceed now to the legislative precedents upon this matter of exclusion, without admitting the person objected to to be sworn in.

JEREMIAH LARNED.

One Jeremiah Larned, as long ago as 1785, was elected to the legislature of Massachusetts, but it turned out that he had violated a law that that legislature had passed. And what was it? On election day he headed a riot for the purpose of preventing the collection of taxes. What did the fathers of that day do? They were not men who were regardless of human rights; they held that inasmuch as Larned had violated the law he was unworthy to take a seat upon that floor, and they kept him out.

JOHN M. NILES.

In the first session of the Twenty-eighth Congress, on the 30th of April, 1844, the credentials of John M. Niles as a Senator from Connecticut were presented to the Senate and objection was made to the oath being administered. Mr. Jarnagin submitted a resolution referring the credentials of Mr. Niles to a select committee, which was instructed—

To inquire into the election, return, and qualifications of the said John M. Niles, and into his capacity at this time to take the oath prescribed by the Constitution of the United States.

Mr. Jarnagin himself made a speech at that time, in which he took the view that it was a question of eligibility that was raised, and that a man who was insane was ineligible, and of course incapable of taking the oath. There was some discussion about it, and some doubt raised, and Mr. Niles's colleague said he had no objection to the matter going to the committee.

On May 16 following, the committee reported in favor of permitting Mr. Niles to take the oath, which was then administered. It appears from the report that Mr. Niles had been suffering

from severe bodily afflictions which impaired his mind to such an extent that he was removed to the insane asylum at Utica, N. Y., where he remained until April 1, 1844, after which he was discharged as improved, but not completely restored to health. The committee reported that while Mr. Niles was laboring under mental and physical disability, he was not of unsound mind in the technical sense of that phrase.

If this case establishes anything, it establishes the right of the Senate to protect itself against a person of infirm or unsound mind; that it recognized that it had the right to exclude a person possessed of every qualification which the Constitution required if he was not of sound mind.

PHILIP F. THOMAS.

Another case in the Senate was that of Philip F. Thomas, of Maryland, in the Fortieth Congress. His credentials were presented on March 18, 1867, and the following day were referred to the Judiciary Committee. There was a very elaborate debate.

The charge against him was that he had been disloyal, and that he was therefore incapable of taking the test oath which was provided for in the act of July, 1862.

The resolution which was then adopted, and under the provisions of which Thomas was excluded from the United States Senate, was as follows:

Resolved, That Philip F. Thomas having voluntarily given aid, countenance, and encouragement to persons engaged in hostility to the United States, is not entitled to take the oath of office as a Senator of the United States from the State of Maryland, or to hold a seat in this body as such Senator, and that the President pro tempore of the Senate inform the governor of the State of Maryland of the action of the Senate in the premises.

The vote for exclusion was 27 to 20. Among those voting in the negative was Lyman Trumbull. He did so because he thought the proof of disloyalty was unsatisfactory.

His position on the question involved had, however, been clearly and unmistakably defined in the case of

BENJAMIN STARK,

who was appointed a Senator from Oregon early in 1862.

There were ex parte affidavits as to Stark's disloyalty. He was not permitted at first to take the oath, and his case went to a committee, which reported in favor of letting Stark be sworn in, but without passing at all on the facts. The discussion of the case, however, showed that it would be impossible to take proof before the legislature of Oregon elected his successor. The state of the proof was so unsatisfactory also that on the resolution to expel Stark not even a majority voted in the affirmative. On the preliminary question Mr. Trumbull, February 7, 1862, made an able and conclusive report. He said:

That an avowed traitor, a convicted felon, or a person known to be disloyal to the Government has a constitutional right to be admitted into the body would imply that the Senate had no power of protecting itself—a power which, from the nature of things, must be inherent in every legislative body. Suppose a member sent to the Senate, before being sworn, were to disturb the body and by violence interrupt its proceedings, would the Senate be compelled to allow such a person to be sworn as a member of the body before it could cast him out? Surely not, unless the Senate is unable to protect itself and preserve its own order. The Constitution declares "that each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

The connection of the sentence in which the power of expulsion is given would indicate that it was intended to be exercised for some act done as a member, and not for some cause existing before the member was elected or took his seat. For any crime or infamous act done before that time the

appropriate remedy would seem to be to refuse to allow him to qualify, which, in the judgment of the undersigned, the Senate may properly do, not by way of adding to the qualifications imposed by the Constitution, but as a punishment due to his crimes for the infamy of his character.

There is absolutely no doubt whatever that if the case of disloyalty had been stronger Stark would have been excluded. The weakness of the case in that respect is manifest when we remember that less than a majority voted to expel him.

KENTUCKY CASES.

On the 3d of July, 1867, the members-elect from the State of Kentucky presented their credentials to the House. They were not then permitted to be sworn in, on the ground that they had been disloyal or had expressed disloyal sentiments.

If there is any criticism to be lodged against the action of the House at that time, it is not that the theoretical ground upon which they based their action was untenable, but that they undertook to exercise the power to exclude a man for disloyalty years after he had been disloyal, as alleged, and after the time in which alone he could have been disloyal.

The Committee on Elections, which took jurisdiction of the case under the order of the House, made several reports, all of which were of the same general character and all of which were sustained by the House. The reports were carefully prepared and were most elaborately argued.

From the report filed by Mr. Dawes, as chairman, I quote as follows:

> The committee are of the opinion that no person who has been engaged in armed hostility to the Government of the United States, or who has given aid and comfort to its enemies during the late rebellion, ought to be permitted to be sworn as a member of this House, and that any specific and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House ought to be investigated and reported upon before such person is permitted to take the seat.

A second report was filed, in which it is said:

> The committee adhere to the views expressed in the former report, that no man who has been engaged in an attempt to overthrow the Government and subvert the Constitution by force of arms, or who has voluntarily given aid, countenance, counsel, or encouragement to persons so engaged, ought to be admitted to a seat in this House to make laws for the nation he has traitorously sought to destroy; and it is apparent that there must be power in this House to prevent this, the House being the judge of the qualifications of its members, of which fidelity to the Constitution is one, and that this end can only be certainly accomplished by the investigating of any specific and apparently well-grounded charge of personal disloyalty made against a person claiming his seat as a member of this House before such person is permitted to take the seat.
>
> The House concurred in this view of the committee by adopting the resolution under which the committee is now acting. The principle upon which this preliminary investigation was ordered was adopted by Congress when the oath of office to be taken by members of this House was prescribed by law, and the preliminary investigation of specific and apparently well-founded charges against a person claiming a seat in this House is only an additional mode of attaining the same result sought to be secured by requiring the oath to be taken by all persons who become members of the House.

From time to time after the objection was made to the swearing in of other members-elect, the House assumed jurisdiction, tried the cases in advance of administering the oath, and where, as sometimes had been the case, it appeared that the claimant had not been disloyal he was of course sworn in; in other cases he was excluded.

As showing that the House in acting in the Kentucky and other cases in the Fortieth Congress was not precipitate and wanting in deliberation, I call attention to the resolution adopted by the House of Representatives on the 22d of March, 1869. This was

four years after the war and nearly two years after the Kentucky cases arose, when it may fairly be said that a deliberate judgment had been reached respecting the right of Congress in a proper case to exclude a member-elect.

On the 22d of March, 1869, the following was adopted as the permanent rule of the House:

Resolved, That in all contested-election cases in which it shall be charged by a party to the case, or a member of the House, that either claimant unable under the act approved July 2, 1862, entitled "An act to prescribe the oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exist, and if such disability shall be found to exist the committee shall so report to the House and shall not further consider the subject without the further order of the House, and no compensation will be allowed by the House to any claimant who shall not have been entitled at the time of the election, and whose disloyalty shall not have been removed by act of Congress.

This rule, it will be observed, is independent of the mere disqualification for disloyalty, but is intended to exhibit the matured determination of the House of Representatives to insist not only upon the oath required by the act of July 2, 1862, but also that the person claiming the right to take the oath should show his right to do so.

The test-oath act only required that he take the oath, but the House held that it had a right to inquire whether he had the capacity to take the oath, which was an exercise of an original power, not based upon any statute.

WHITTEMORE CASE.

Again, in the Forty-first Congress the House of Representatives asserted its right to exclude from membership a Representative-elect with a perfect certificate and possessing all of the so-called constitutional qualifications. This is the case of Whittemore, from South Carolina. It must be remembered that Whittemore was a Republican and that he brought his certificate to a Republican House of Representatives. Previously, on the 24th day of February, 1870, he had resigned in order to avoid a vote on a resolution of expulsion which had been reported to the House.

It was charged against him that he had sold a cadetship, and that therefore he was unworthy to continue to be a member of the House. His resignation, however, prevented action upon the resolution of expulsion, and the House contented itself with the adoption of a resolution of censure. Whittemore returned to his constituency, a special election was ordered, and he was reelected and returned to the same session of Congress, with his certificate of election under the broad seal of the State of South Carolina. Objection was made by General Logan, and after some discussion the matter was postponed until June 21. General Logan made a powerful speech, in which he asserted the right to exclude a man guilty of an offense such as Whittemore had committed. In this debate he said, among other things:

It is said that the constituency had the right to elect such a member as they may think proper. I say no. We can not say that he shall be of a certain politics, or of a certain religion, or anything of that kind; but, sir, we have the right to say that he shall not be a man of infamous character. He is not merely a representative of the constituents who elect him, but his vote in the House is a vote for the whole nation. It is a vote for the people of the whole country, and every district in the United States has the same interest in his vote that his own district has.

Hence, if Congress shall not have the power or authority or shall not have the right to exclude a man of that kind, then the rights of the people of the whole country may be destroyed by a district sending a Representative who may be obtained to vote in a manner which may be destructive of the rights of the people, Are we to be told that Congress has no right to prevent any-

thing of this kind because of the right of any constituency to send whomsoever they please?

* * * * * * *

It is not that the people shall not be represented. Not at all. It is this: That the people of the country have no right to destroy their own liberties by filling Congress with men who, from their conduct, show themselves capable of the destruction of their Government.

* * * * * * *

Congress, being the representatives of the whole people, are entitled to say that the rights of the whole country shall not be destroyed by one or more districts throwing in here a man, or set of men, capable of their destruction; and that, having knowledge of the facts, and the power to prevent the mischief by exercising the right of exclusion, they have a right to exercise that power, and thereby protect the interests of the country, and to preserve instead of destroy the right of representation.

* * * * * * *

For crime, sir, we have a right to proscribe a man. That is the ground I put it on. That is the ground on which I put it first, and that is the ground on which I put it now. We have a right, I say, to protect the interests of the country by excluding men from these halls on the ground of crime. It is not a crime to be a Democrat or a Republican, to be a Presbyterian or a Methodist, or a member of any other denomination; but, sir, it is a crime for a man to do what this man has done. And why? Because the laws of our country denominate it a crime. It is made a crime by law. Hence my theory is based on the law, and is this, that in pursuance of the law and in carrying out its principles we must protect the country by protecting ourselves against crime and against criminals in this body. That is the ground I took and the theory I stated.

The principal ground of objection was to immediate action, and the claim was made that the case ought to be sent to a committee to determine Whittemore's right to be sworn in. Logan replied that the House was in possession of all the facts. He withdrew the demand for the previous question and the debate proceeded. Later on he said he supposed if there were not more than seventeen or eighteen who wanted to speak, of course it would not take much time, and that the House could vote down the previous question if it wanted more discussion. He said he did not care whether the House sustained the demand for the previous question or not. But the House seemed to be much more insistent than Logan, for the previous question was ordered and the vote on the main question was 130 to 24. No doubt some of those who voted in the negative were opposed to exclusion.

But the most of them must have felt as did Mr. Farnsworth, who said:

I do not know but that when this matter is properly investigated I shall also vote for excluding Mr. Whittemore from a seat, but I think it ought to be first investigated by a committee.

The resolution in this case provided for the return of his credentials to Whittemore and his exclusion from the House.

Now, what do our friends say about that case? Well, that is not authority either, they say. They whistle down the wind the Whittemore case as they whistle down the wind everything else that does not accord with their views. The Whittemore case is absolutely sound. The speech of General Logan expresses the principle with clearness and cogency upon which, with propriety, that man was excluded, and the most eminent men in the House of Representatives voted for it, among them Garfield and Randall and S. S. Cox and Judge McCrary and many others.

GEORGE Q. CANNON.

The case of George Q. Cannon, who was excluded from the Forty-seventh Congress as a Delegate on the ground that he was a polygamist, on principle clearly sustains the proposition of exclusion of a member.

It is true that when excluded Cannon was merely a Delegate-elect from the Territory of Utah, and not a person elected to an office created by the Constitution.

Nevertheless, we assert that on principle that case can not be differentiated from the case at bar.

Allen G. Campbell was a candidate for Delegate from the Territory of Utah against George Q. Cannon in 1880. Campbell received about 10 per cent of the votes cast, and the governor issued a certificate to him on the theory that Cannon was ineligible to be a Delegate in Congress. Campbell's seat was contested by Cannon. The committee, in January, 1882, made a very elaborate report. All but one united in declaring that Campbell, not having received a majority of the votes, was not entitled to a seat, and the dissenting member finally agreed with the majority, that whatever Cannon's rights might be, Campbell ought not to be seated.

A considerable majority of the committee further found that as Cannon was a polygamist, he was ineligible and disqualified to be Delegate in Congress. At this time the Edmunds law had not been passed, and there was no statutory ground of ineligibility.

Some members of the committee undertook to differentiate between the right of the House to exclude a Member and its right to exclude a Delegate, while other members insisted that, while there was a sharp distinction to be drawn between a Member and a Delegate, yet that in so far as the matter of ineligibility on the ground of polygamy was concerned, the same principle would apply to both.

This, then, was the condition of the Cannon case before the Edmunds law was passed. The committee was unanimously of the opinion that Cannon was duly elected a Delegate from the Territory of Utah, and therefore that he was entitled to hold the certificate of election; that he stood in the attitude of a man appearing before the bar of the House with the proper certificate of the governor of the Territory of Utah and with no infirmity except that which went to his disqualification, namely, the fact of polygamy.

Before the case was taken up in the House for discussion and action the Edmunds law was passed. Mr. Cannon in his speech says that there were some members of the House who had told him that while they would not have excluded him under the report of the committee, they would then vote to exclude him because of the provisions of section 8 of the Edmunds Act; and Mr. Ranney, of Massachusetts, a member of the Committee on Elections, who had dissented from the majority report, declared that he felt compelled to vote in favor of the exclusion of Cannon because of the passage of that law.

Nevertheless, the fact appears, and I believe it to be the just inference from what occurred from the report of the committee and the debate on the floor of the House, that Cannon would have been excluded if the Edmunds law had never been passed. The vote in favor of allowing him his seat was 79, and against it 123.

When we look at the arguments made on both sides of this House, it will be discovered that he would have been excluded if the House had come to pass upon it before the passage of the Edmunds law.

Statutory Precedents.

I come now to the statutory declarations where disqualifications have been imposed.

Section 21 of the act of April 30, 1790, is as follows:

That if any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present, or reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or judges of the United States, in any suit, controversy, matter, or cause depending before him or them, and shall be thereof convicted, and so forth, shall be confined and imprisoned, at the discretion of the court, and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

Section 5499, which was passed in 1791, provides:

That every judge of the United States who in any wise accepts or receives any sum of money or other bribe, etc., shall be fined and imprisoned, and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

IS A MEMBER OF CONGRESS AN OFFICER?

Before citing other acts of Congress, it is proper to discuss the question as to whether a member of Congress is an officer within the meaning of the statute.

If a member of Congress is not an officer, if the qualifications of a member of Congress are only those named in the Constitution, then, of course, the makers of the Constitution meant that nobody could be made ineligible for Congress, either by law or by the act of either body, even though laws passed immediately after the adoption of the Constitution made him ineligible for all other positions under the Government.

Now, upon that proposition I make these observations, as to the meaning of the word "office."

First. Undoubtedly under the Constitution, in one or two instances, the word "office" does not include Representative in Congress, as, for example, the last paragraph of section 6, Article I:

No person holding any office under the United States shall be a member of either House during his continuance in office.

In that case the words "holding any office" means an office other than a member, but the context is absolutely unmistakable, and no person is in danger of assuming, even if a member of Congress hold an office, that it meant to say that no member of Congress shall be eligible to be a member of Congress.

In the second place, the provision in the last paragraph of section 3 of Article II, relating to the duties of the President, that he shall commission all the officers of the United States, does not mean that he is to commission members of Congress; but he is himself an officer, and he does not commission himself, nor does he commission the Vice-President, who is also an officer under the United States.

So also paragraph 2, section 1, Article II:

But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

There the distinction is made, "No Senator or Representative, or person holding an office of trust."

But under the Constitution the word "office" must include in certain of its provisions a Representative in Congress.

It is inconceivable that in the Constitution the word "office" never includes a member of Congress. Look at the last paragraph of section 3, Article I:

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Is it conceivable that the framers of the Constitution meant

that a man might be adjudged guilty in case of impeachment and that that judgment of guilty could carry with it a judgment disqualifying him from holding any office save only to be a Representative or Senator in Congress?

Paragraph 8, section 9, Article I, is as follows:

> No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Did the Constitution mean that Representatives and Senators in Congress could receive emoluments, presents, office, or title from some king, prince, or foreign state, but no other person holding an office could without the consent of Congress?

But in the next place, as to statutes. Whatever may be held to be the meaning of the word "office" in the Constitution, it does not follow that the same meaning must be given to it in the statutes. We find a varying meaning in the Constitution, and we find a varying meaning in the statutes. The act of 1790 has always been assumed to cover members of Congress.

Section 5500 of the Revised Statutes, originally passed in 1853, and now in substantially the form in which it was when originally passed, provides:

> Any member of either House of Congress who asks, accepts, or receives any money, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money, * * * either before or after he has been qualified or has taken his seat as such member, with intent to have his vote or decision on any question, matter, cause, or proceeding * * * pending in either House, * * * shall be punished by a fine, etc.

Section 5502 is as follows:

> Every member, officer, or person convicted under the provisions of the two preceding sections who holds any place of profit or trust shall forfeit his office or place, and shall thereafter be forever disqualified from holding any office of honor or trust or profit under the United States.

This section applies explicitly to a member of Congress, and brings forfeiture of the office or place held by him. If "office" in this section does not include a member of Congress, the word "place" must include him.

Now, the word "office" in that concluding part of this section must refer to member. First, because the word "office" is used in the preceding line as necessarily including a place that is held by a member. It can not fail to include that, for it refers to a "member" and what shall happen to him. In the next place, because it is not conceivable that the legislative body intended that the violation of that law by a member should forfeit the position that the member had and then not intended to disqualify him from being elected again as a member of the House when it disqualifies him from holding all other offices or places under the United States.

But that is not the only statutory construction of the word "office." It is still more explicitly declared in the test-oath act of July 2, 1862:

> That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval departments of the United States, excepting the President of the United States, shall, before entering upon the duties of such office and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation:
>
> "I, A B, solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever

under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto.

"And I do further swear (or affirm) that to the best of my knowledge and ability I will support the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

Which said oath, so taken and signed, shall be preserved among the files of the court, House of Congress, or Department to which the said office may appertain.

Any person who shall falsely take the said oath shall be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offense, shall be deprived of his office and rendered incapable forever thereafter of holding any office of trust under the United States.

It will be noticed that the only person required to take that oath is an officer, a person elected or appointed to any office of honor or profit, but it does not include in this phraseology a member.

By reference to the concluding portion of the act it will appear that the word "office" does include a member of Congress:

Which said oath so taken and signed shall be preserved among the files of the court, House of Congress, or Department to which the said office may appertain.

We not only have the use of the word "Congress" as indicating to what the word "office" appertains, but also the universal, unquestioned construction by the acts of the Senate and of the House in compelling the test oath to be taken year after year until it was repealed. Each House of Congress recognized that that oath was an oath to be taken by a Representative in Congress, notwithstanding the fact that the act passed made it apply only to a person elected or appointed to an office of honor or trust in the United States.

I quote this section here as well for the purpose of showing the Congressional precedents imposing a substantial qualification or disqualification upon the members of Congress really substantial in its character, as the facts of history show, as to exhibit what is meant in the statutes by the word "office."

There are many other statutory provisions, passed from time to time since 1790, disqualifying for office of trust or profit under the United States persons guilty of the several crimes defined in those statutes. I do not refer to them specifically, but they are illustrated by the statutes already quoted.

It ought also to be said that section 8 of the Edmunds Act, whatever meaning may be given to it, evidences the legislative will to disqualify polygamists for office. It indicated the legislative purpose so aptly described by Justice Matthews, in the Ramsey case, when he said that no more cogent or salutary method could be taken than was taken by the Edmunds Act, which undertook to withdraw from all political influence those persons who showed a practical hostility to the development of a commonwealth based upon the idea of the union for life of one man and one woman in the holy estate of matrimony.

The statutory declaration, if I may use that form of expression as applicable to the joint action of the House, coupled with the President's approval, is only a more solemn declaration by both Houses of the principle that it has the right to exclude under certain conditions; that either House may do it. That very point was made in the discussion on the test oath in the Senate—that of course that law could not with certainty bind any succeeding Senate or any succeeding House, but that it was apparent that

so long as there existed any necessity for such an oath, and in the very nature of things the time would come in a few years when it would not be necessary, either House would respect its requirements and compel a submission to it; and that was the action of the Senate and House for nearly twenty years.

THE INELIGIBILITY CREATED BY THE EDMUNDS ACT.

Having in mind that portion of this report in which I have heretofore set out the status and condition of Brigham H. Roberts, I would inquire where the specific provisions of the Edmunds Act place him.

Two facts appear as pertinent to this inquiry.

First. That he was convicted in 1889 of unlawful cohabitation under that act and served a term in the penitentiary therefor.

Second. That he has been ever since 1885, and is now, a polygamist, as that word is used in section 8 of the Edmunds Act and defined by the Supreme Court of the United States in the cases of Murphy *vs.* Ramsey (114 U. S., 15) and Cannon *vs.* The United States (116 U. S., 55). Section 8 is as follows:

> No polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to, or be entitled to hold, any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

Reading that act as applicable to this case, eliminating the irrelevant portions, it appears as follows:

> No polygamist shall be entitled to hold any office or place of public trust, honor, or emolument under the United States.

In the Ramsey case, above referred to, a specific distinction is made between a polygamist and a person cohabiting with more than one woman. A polygamist is a person having a certain status respecting more than one woman.

The condition, therefore, of a polygamist may be merely passive and requiring no affirmative act. To cohabit with more than one woman is, however, to do an affirmative thing. The result is that one who has two or more wives that he holds out to the world as such is a polygamist, wherever he may be, while one who cohabits with more than one woman is not cohabiting except in the place in which, of necessity, cohabitation must occur.

In the Ramsey case the court illustrated its definition of a polygamist as being a status or condition like any other qualification for elector, or for office, and declared that it was as if Congress had undertaken to make a married man ineligible. It would be the status in that event of being a married man which would create and continue the ineligibility.

It therefore appears that the fact that a man is a polygamist is a fact that inheres in him and stays with him, and persists in remaining with him wherever he may go, so long as he is the possessor of more than one wife; and just as one who is a married man in the State of Maryland continues to be a married man if he leaves his wife at home and comes to the District of Columbia, so Mr. Roberts, being in the condition or status of a polygamist in the State of Utah, does not leave that status behind, nor does he dissociate himself from that status or cast off the garb of a polygamist by leaving his wives at home and traveling from that State into the District of Columbia.

In the very nature of things the House of Representatives,

wherever it is as a House of Representatives, is in a place under the exclusive jurisdiction of the United States; therefore when Roberts comes into the District of Columbia, in the status of a polygamist, he is ineligible under the Edmunds Act to hold any office or place under the United States, and therefore ineligible to hold the position of member of the House of Representatives.

THE COMPACT OF STATEHOOD.

I come now to the third main proposition, that his election involves a breach of the compact and understanding by which Utah was admitted to the Union.

Utah was admitted to the Union with the distinct understanding upon both sides that polygamous practices were under the ban of the church, prohibited and practically eradicated, both as a practice and a belief, and that they would not be renewed.

The effort is made to alarm people upon this proposition that some similar objection might be made to representation from States in which the claim might be made that the right to vote was denied to some citizens. It is a sufficient answer to this to say that if such ground of complaint exists the Constitution specifically tells us what our remedy is; and declares precisely, in the fourteenth amendment, what we may do in any event when the right of suffrage is improperly denied. There is no possible escape from that position, even assuming that there was anything in the bogy man.

But as to Utah, she was admitted on the express statement that the practice of polygamous living was interdicted by the church, was practically abandoned by the people, and eradicated as a belief. Of course, that sporadic instances of the violation of the law against cohabitation might occur no one doubted.

The manifesto forbidding plural marriages and enjoining obedience to the laws relating thereto was issued by Wilford Woodruff, president of the Church of Jesus Christ of Latter-Day Saints, September 25, 1890.

Some doubt having arisen as to whether that manifesto prohibited association in the plural marriage relation as well as the contracting of plural marriages as a ceremony, President Woodruff himself testified under oath as follows:

Q. Did you intend to confine this declaration and advice to the church solely to the question of forming new marriages, without reference to those that were existing—plural marriages?

A. The intention of the proclamation was to obey the law myself—all the laws of the land on that subject—and expecting that the church would do the same.

Q. You mean to include, then, in your general statement, the laws forbidding association in plural marriages as well as the forming of new marriages?

A. Whatever there is in the law with regard to that—the law of the land.

Q. Let me read the language, and you will understand me, perhaps, better. "Inasmuch as laws have been enacted by Congress forbidding plural marriages, * * * I hereby declare," etc. Did you intend by that general statement of intention to make the application to existing conditions where the plural marriages already existed?

A. Yes, sir.

Q. As to living in the state of plural marriage?

A. Yes, sir; that is, to the obeying of the law.

Q. In the concluding portion of your statement you say, "I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the laws of the land." Do you understand that that language was to be expanded to include the further statement of living or associating in plural marriage by those already in the status?

A. Yes, sir; I intended the proclamation to cover the ground—to keep the laws, to obey the law myself—and expected the people to obey the law.

The significance of this statement by the spiritual head of the church is the more apparent when we remember that it was made

but a short time before the question of the admission of Utah was debated in the House of Representatives.

Is it to be an occasion for wonder, therefore, that the proclamation of amnesty issued by President Harrison, January 4, 1893, should contain these words:

Whereas it is represented that since the date of said declaration the members and adherents of said church have generally obeyed said laws and abstained from plural marriages and polygamous cohabitation; and

Whereas by a petition dated December the 19th, 1891, the officials of said church, pledging the membership thereof to the faithful obeyance of the laws against plural marriages and unlawful cohabitation, applied to me to grant amnesty for past offenses against said laws.

Is it strange that the House Committee on Territories in 1893 should report that "polygamy is dead?" And if that is not fully convincing, let the unprejudiced mind consider the following extracts from the debate in the House of Representatives on the admission of Utah, December 12, 1893:

Mr. RAWLINS, the Delegate from the Territory, seems to have hypnotized the House by his eloquence. I quote a sentence or two:

Mr. MORSE. The twin relic of barbarism—polygamy—still lives; and while it does live and is in the ascendency I can never vote to admit Utah as a State of the Union.

Mr. RAWLINS. It was found in 1882 there were 2,225 adult male polygamists in the Territory of Utah. This report proceeds to say:

"It is not denied by the advocates of admission that polygamy is practiced in that Territory, but they claim it is not obligatory upon the members of the Mormon Church, but that it is gradually dying out until now there are comparatively few who are living in polygamous relations, and that this few are generally past the meridian of life. They claim that polygamous marriages have ceased to be solemnized, that in the near future polygamy will have ceased altogether, and is even now practically dead, and that it is unjust to deprive the many of political rights because the comparatively few are violating the law in this regard."

The majority report of the committee in 1888 found that the practice of polygamy had been decreasing. It was claimed then by representatives of the Mormon people that polygamy had been forbidden by the Mormon Church, and they asserted that it was no longer in existence and would not revive.

Mr. MORSE. Will the gentleman allow me to ask a question right there?

Mr. RAWLINS. Yes, sir.

Mr. MORSE. Is it not a fact that prior to the election of the gentleman the Territory of Utah sent here as their representative Mr. Cannon, who had six wives?

Mr. RAWLINS. No, sir.

Mr. MORSE. How many wives did he have?

Mr. RAWLINS. You mean George Q. Cannon?

Mr. MORSE. He was a polygamist, was he not?

Mr. RAWLINS. That is ancient history, my friend. Mr. Caine has represented Utah here; he was my predecessor as the Delegate from the Territory. He served here ten years. Mr. Caine is not a polygamist. In 1882 Mr. Cannon, the polygamist you speak of, was excluded from his seat in Congress on account of his polygamy.

Mr. MORSE. But he represented the sentiment of those people all the same, because they elected and sent him here.

Mr. RAWLINS. They elected him in years gone by. I am not denying, my dear friend, that in 1853 or 1860 or 1875 or 1880 polygamy was practiced in Utah. I am not denying that the people of that Territory elected polygamists to office in those old days. But the gentleman does not seem to know that the world does progress. [Applause.] There is nothing under the sun that is not changeable and subject to alteration.

"Why," said Mr. RAWLINS, "just let that noble commonwealth into the sisterhood of States and then we will show you the magnificent specimens of Utah manhood we will send down here." Well, they have sent the predicted specimen. [Laughter.]

And so the enabling act was passed. Every incredulous member who cast doubt upon the sincerity of polygamists in Utah was whistled down the wind. Every legislator who doubted if the funeral of polygamy had really taken place was laughed to scorn. Polygamy was dead! That was the battle cry, and on it the battle was fought and won.

What would have become of the bill if Mr. RAWLINS had declared that the State of Utah, just about to be born, would reserve the right to send a polygamist to Congress? His bill would have been buried beneath an avalanche of votes beyond the hope of resurrection.

The language of the enabling act is, "Provided that polygamous or plural marriages are forever prohibited."

The understanding was that those words prohibited the practice of living in the status or condition of polygamous marriage.

Bouvier's Law Dictionary says:

Marriage.—A contract made in due form of law by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge toward each other the duties imposed by law on the relation of husband and wife. Marriage, as distinguished from the agreement to marry, the mere act of becoming married, is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on themselves.

"Marriage" is the legal status or condition of husbands and wives just as infancy is the legal relation or condition of persons under age. (1 American and English Encyclopedia of Law, volume 14, page 470.)

The act of marriage having been once accomplished, the word becomes afterwards to denote the relation itself. (Schouler on Domestic Relations, 22.)

Senator RAWLINS was asked before the committee on this case the following question:

Without reference to any assumed facts in this case, do you think that Congress would have admitted Utah to statehood if it had been predicted that Utah would send here in a few years a man as her Representative who was polygamously living with more than one wife?

He answered:

I do not think the Congress of the United States would have admitted Utah if they at that time had believed that a revival of the practice of polygamy would occur.

It is not to be assumed from the fact that a rare or sporadic case of polygamous marriage occurred in Utah, or sporadic instances of unlawful cohabitation had come to light, that that would be a violation of the agreement; but we take it that it is in the last degree a violation of the agreement or understanding when that State sends to Congress a man who is himself engaged in the persistent practice of the very thing the abandonment of which was the condition precedent to its admission; and that man the most conspicuous defier of the law and violator of the covenant of statehood to be found in Utah.

As bearing on this, I here quote the manifesto issued a few days ago by the Mormon Church and presented by Senator RAWLINS to the Senate:

In accordance with the manifesto of the late President Wilford Woodruff, dated September 25, 1890, which was presented to and unanimously accepted by our general conference on the 6th of October, 1890, the church has positively abandoned the practice of polygamy, or the solemnization of plural marriages, in this and every other State, and that no member or officer thereof has any authority whatever to perform a plural marriage or enter into such a relation. Nor does the church advise or encourage unlawful cohabitation on the part of any of its members.

In other words, the Mormon Church has left it to us and not to the church to say what shall be done with Mr. Roberts. Is the House of Representatives to respond in any uncertain tone?

THE RIGHT TO EXPEL.

Upon this alternative proposition that the proper method of procedure is to permit the claimant to be sworn in, and then, if a two-thirds vote can be obtained, to expel him, I desire to call

attention first of all to what Story says on that subject, section 837:

> The next clause is, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." No person can doubt the propriety of the provision authorizing each House to determine the rules of its own proceedings. If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power, and it would be absurd to deprive the councils of the nation of a like authority.
>
> But the power to make rules would be nugatory unless it was coupled with a power to punish for disorderly behavior or disobedience to those rules. And as a member might be so lost to all sense of dignity and duty as to disgrace the House by the grossness of his conduct, or interrupt its deliberations by perpetual violence of clamor, the power to expel for very aggravated misconduct was also indispensable, not as a common but as an ultimate redress for the grievance.

And again, section 838:

> What must be the disorderly behavior which the House may punish, and what punishment other than expulsion may be inflicted, do not appear to have been settled by any authoritative adjudication of either House of Congress. A learned commentator supposed that members can only be punished for misbehavior committed during the session of Congress, either within or without the walls of the House, though he is also of opinion that expulsion may be inflicted for criminal conduct committed in any place.

And after a reference to the Blount case, Story says:

> It seems, therefore, to be settled by the Senate upon full deliberation that expulsion may be for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a Senator.

On the subject of expulsion, Rawle says, second edition, page 48:

> Both the Senate and the House of Representatives possess the usual power to judge of the elections and qualifications of their own members, to punish them for disorderly behavior, which may be carried to the extent of expulsion, provided two-thirds concur. It had not been yet precisely settled what must be the disorderly behavior to incur the punishment, nor what kind of punishment is to be inflicted. * * *

Paschal on the Constitution, page 87:

> It seems to be settled that a member may be expelled for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a member.

We do not need to call particular attention to the phraseology of the constitutional provision, nor do we think it very important to consider the evolution, from the standpoint of punctuation, through which that provision went in the Constitutional Convention. It now appears as following in the same sentence as the provision for disorderly behavior, with only the rhetorical separation of a comma from it.

It thus appears that the language of the provision for expulsion, in the view of the ablest commentators, furnishes clear and cogent reasons for its construction, and that neither House ought to expel for any cause unrelated to the trust or duty of a member.

This has been the uniform practice of both Houses of Congress.

The case of Hiss *vs.* Bartlett (3 Gray, 468) is cited as showing the unlimited power of a legislative body to expel.

A casual reading of this case, which a careful reading confirms, will show that it directly sustains the position of the majority.

As there was no constitutional provision in Massachusetts respecting expulsion, the legislature of that State was, of course, clothed with all the powers incident to expulsion which are inherent in a legislative body whose powers are not limited by a constitution.

In addition to that, Hiss was expelled on the ground that his

"conduct on a visit to Lowell, as one of a committee of the house, was highly improper and disgraceful, both to himself and to the house of which he was a member."

Everything said by the court had relation to such a state of facts. The case is one of expulsion for gross misconduct as a member and in the performance of his duty as a member.

Neither House has ever expelled a member for any cause unrelated to the trust or duty of a member.

Both Houses have refused to expel where the proof of guilt was clear, but where the offense charged was unrelated to the trust or duty of a member.

HUMPHREY MARSHALL.

The Senate in 1796 refused to expel Humphrey Marshall, of Kentucky. He was charged with the commission of a grave offense against the law of his State. The Senate refused to expel, on the ground that it had "no jurisdiction" to do so.

WILLIAM N. ROACH.

In 1893 proceedings were set on foot in the Senate looking to the expulsion of William N. Roach, a Senator from North Dakota. A long and exceedingly interesting discussion followed, but the proceeding was abandoned without coming to a vote and Roach served out his term. Not a solitary precedent in the American Congress was cited in support of the proposition to expel. There was no precedent.

O. B. MATTESON.

Matteson had resigned in the Thirty-fourth Congress before a resolution of expulsion was passed. He was charged with a grave offense—an offense inconsistent with his trust and duty as a member. He was reelected to the Thirty-fifth Congress and took his seat without question or objection.

In the Thirty-fifth Congress a resolution of expulsion was proposed against him. The case went to a committee, and that committee, of which our honored colleague, Mr. GROW, was a member, in a somewhat elaborate argument, reported against the expulsion of Matteson on the ground that the Thirty-fifth Congress had no right to expel, because the offense was committed in the previous Congress, and did not relate to any violation of his trust or duty as a member of the Thirty-fifth Congress.

The resolution reported was to the effect that it was inexpedient for the House to take any further action in regard to the resolution proposing to expel O. B. Matteson, and the House never did take any further action, excepting to lay the resolution on the table, and Matteson served through the Thirty-fifth Congress.

BROOKS AND AMES CASES.

In the next place, we have the Brooks and Ames cases. They were cases in which charges had been made against Oakes Ames and James Brooks of corruption in connection with Credit Mobilier, and a special committee of five took the cases and reported in favor of expulsion.

Thereupon, the Judiciary Committee, which had taken up a resolution respecting Colfax, reported on the Ames and Brooks cases, with an elaborate argument setting out that the House had no right to expel, and gave many reasons, among others that it was an imposition of a qualification not fixed by the Consitution. They laid down the same proposition that can rightfully be urged against expulsion here, if the minority of this committee is right.

On February 18, 1873, the special committee submitted an elab-

orate report, concluding with the following preamble and resolutions, viz:

1. Whereas Mr. Oakes Ames, a Representative in this House from the State of Massachusetts, has been guilty of selling to members of Congress shares of stock in the Credit Mobilier of America for prices much below the true value of such stock, with intent thereby to influence the votes and decisions of such members in matters to be brought before Congress for action: Therefore,

Resolved, That Mr. Oakes Ames be, and he is hereby, expelled from his seat as a member of this House.

2. Whereas Mr. James Brooks, a Representative in this House from the State of New York, did procure the Credit Mobilier Company to issue and deliver to Charles H. Neilson, for the use and benefit of said Brooks, 50 shares of the stock of said company at a price much below its real value, well knowing that the same was so issued and delivered with intent to influence the votes and decisions of said Brooks as a member of the House in matters to be brought before Congress for action, and also to influence the action of said Brooks as a Government director in the Union Pacific Railroad Company: Therefore,

Resolved, That Mr. James Brooks be, and he is hereby, expelled from his seat as a member of this House.

Mr. Sargent, of California, offered the following substitute:

Whereas by the report of the special committee herein it appears that the acts charged as offenses against members of this House in connection with the Credit Mobilier occurred more than five years ago, and long before the election of such persons to this Congress, two elections by the people having intervened; and whereas grave doubts exist as to the rightful exercise by this House of its power to expel a member for offenses committed by such member long before his election thereto, and not connected with such election: Therefore,

Resolved, That the special committee be discharged from the further consideration of this subject.

Resolved, That the House absolutely condemns the conduct of Oakes Ames, a member of this House from Massachusetts, in seeking to procure Congressional attention to the affairs of a corporation in which he was interested, and whose interest directly depended upon the legislation of Congress, by inducing members of Congress to invest in the stocks of said corporation.

Resolved, That this House absolutely condemns the conduct of James Brooks, a member of this House from New York, for the use of his position of Government director of the Union Pacific Railroad and of member of this House to procure the assignment to himself or family of stock in the Credit Mobilier of America, a corporation having a contract with the Union Pacific Railroad, and whose interests depended directly upon the legislation of Congress.

They could not say that the things complained of were unrelated to these men as members, because at the time of their occurrence they were members not of the House that was then considering the resolutions, but of a previous House. The result was that the resolutions did not refer to any claim that these facts had no relation to Ames and Brooks as members. The resolution declaring in its preamble the grave doubt of the House as to its right to expel under those circumstances was substituted for the original resolution by a vote of 115 to 110. Thereupon, a motion was made to lay the preamble of the substitute on the table—that is to say, the proposition was made to vote down the principle declared in that substitute, that the House had no jurisdiction.

That motion was lost by a vote of 79 to 123, and Mr. McCullough was the only person who, in the progress of the vote, gave his reasons for voting "no," and he said he voted "no" because he doubted the power of the House to expel. Thereupon, a motion was made to adopt the preamble, and that motion failed to carry by a vote of 98 to 115, a very much smaller majority than that by which the motion to lay it on the table was lost. The inference from these two votes is that as to this particular proposition there was uncertainty in the minds of the members and they were not ready to make a definite declaration. Thereupon, the House by an overwhelming majority adopted the resolutions of condemnation.

The sum and substance of it all is, that the House in the Ames and Brooks case, where, as we apprehend, history and all authority declare the proof of guilt was practically conclusive, refused to adopt the report of the committee in favor of expulsion, and merely censured the offending members.

As indicating the views of eminent and able members of the House on this question, we quote the following from the debate on the Ames and Brooks case:

Mr. McCRARY. Now, sir, in this case, if the facts which the committee have found are true, the purpose and object of these corrupt transactions was to secure influence not alone in the Fortieth Congress, but in subsequent Congresses as well. The Union Pacific Railroad Company and the Credit Mobilier expected to require, perhaps not positive legislation, but they desired to prevent unfriendly legislation in all these Congresses. I have no doubt that they would have been glad if they had had the power to prevent this present investigation.

Without discussing the general question of jurisdiction, about which I confess I have some difficulty, I am perfectly satisfied to rest the jurisdiction of the House in this case upon the ground which I have just stated.

Mr. FARNSWORTH. Mr. Speaker, since I first examined the subject of the right of the House of Representatives to expel a member under that provision of the Constitution which authorizes each House to "punish its members for disorderly behavior," and "with the concurrence of two-thirds expel a member," my conviction has been growing stronger and stronger that this House has no jurisdiction of an offense committed by a person before he was a member of this body. I do not propose to enlarge upon that subject. In reference to this question, I concur in the conclusion of the Judiciary Committee, whose report in another case was yesterday read to the House.

Mr. BINGHAM. Gentlemen in this connection have referred to Story. I do not propose to read at any great length from him. I am not unmindful of the fact that this lamented man, so full of learning, often crowded into his pages so much of the text of others with whose writings he was familiar that a doubt often arises as to his true and certain meaning. But I do not hesitate to say that every thoughtful man in America who reads the text of Story will come to the conclusion that upon the question under consideration this House has no power whatever over any member of this body except the power expressly given by the text of the Constitution and by the laws of the United States passed under the Constitution.

Story says, quoting from the Constitution: "Each House may determine the rules of its proceedings, punish its members for disorderly behavior." Punish its members, not the members of another House, but punish its members; not a member of the Fortieth Congress: not a member of the Thirty-ninth Congress; not a member of the Thirty-eighth Congress; "punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member." * * *

"No person can doubt the propriety of the provision authorizing each House to determine the rules of its own proceedings. If the power did not exist it would be utterly impracticable to transact the business of the nation either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power; and it would be absurd to deprive the councils of the nation of a like authority. But the power to make rules would be nugatory unless it was coupled with a power to punish for disorderly behavior or disobedience to those rules."

Now, how could a man who was not a member of your body at all be guilty of misbehavior as a member of it or of disobedience to your rules before he came to be a member of it? It is useless to waste words upon such a proposition. Story goes on: "And as a member might be so lost to all sense of dignity and duty as to disgrace the House by the grossness of his conduct, or interrupt its deliberations by perpetual violence or clamor, the power to expel for very aggravated conduct was also indispensable, not as a common but an ultimate redress for the grievance."

From whom? From a member of this body. For what? For misconduct, for crime if you please, too grievous to be put up with or borne while he was a member of that body. Gentlemen have referred to Rawle. Rawle refers to the same provision of the Constitution, and says:

"It has not been precisely settled what must be the disorderly behavior to incur punishment, nor what kind of punishment is to be inflicted; but it can not be doubted that misbehavior out of the walls of the House or within them when it is not in session would not fall within the meaning of the Constitution."

There is an authority cited by the committee. I think it goes too far, but it does not sustain the committee. I stand upon the ground that a member of this body during his membership may be expelled for any crime he may

have committed against the laws of his country or against the rules and authority and dignity of this House after his election to this, not to another House. And that is as far as, under the obligations of my oath, I dare go. And I venture the opinion that when the question comes to be understood by the American people, that will be as far as any House of Representatives dare go.

GEORGE Q. CANNON.

But I think a more significant case still than that—significant in more senses than one—was the case of Cannon, in the Forty-third Congress. George Q. Cannon had the certificate as Delegate from Utah. A feeble effort was made to prevent his being sworn in. There was no evidence that he had ever violated any law, and nothing more than a moral objection could be urged against him. Maxwell contested his seat on the theory that Cannon was ineligible, and that he, Maxwell, being the only eligible candidate, was therefore elected. His pretensions on that ground were promptly disposed of against him.

The committee brought in a report that Cannon was elected and returned. This was in May, 1874. The minority of the committee insisted that he was entitled to the seat which he occupied. The resolution of the minority was adopted by a small majority, as against the resolution that he was elected and returned. Some of the best, strongest, and ablest men in the House voted "no" on that proposition; among them, of those who are now in public life, were BURROWS, FRYE, HARMER, and HOAR.

The suggestion was made that the proper proceeding was to expel, if Cannon was a polygamist; and the House permitted itself to believe, since Cannon was already in his seat, that that was the proper course.

A committee was at once appointed to examine into the question as to whether or not he was a polygamist in order that they might expel him.

That committee was appointed in May, 1874, and on the 21st day of January, 1875, it reported in favor of what they called exclusion, but what was, of course, expulsion, because he was already in. They found he was a polygamist. The minority report, which accompanied the majority report, opposed expulsion on three grounds.

First. Because the House had in the preceding session declared that Cannon was entitled to a seat.

Having declared that he was entitled to his seat, it would be inconsistent to expel him, since there was no intervening circumstance which changed his status at the date of this report from his status when the House confirmed his right to a seat.

Second. That when Utah was created as a Territory it was a Mormon community, and Congress knew it and had a right to expect that it would send a Mormon Delegate. It therefore had no right to protest now that the Mormon had come.

Third. We here quote the language of the minority:

> But a graver question than those we have considered is the question whether the House ought, as a matter of policy or to establish a precedent, expel either a Delegate or a Member on account of alleged crimes or immoral practices unconnected with their duties or obligations as Members or Delegates when the Delegate or Member possesses all the qualifications to entitle him to his seat.

There is more along the same line in this report.

Three weeks later this case was called up for consideration. Mr. Loughridge, of Iowa, raised the question of consideration, and the House refused to take it up by an overwhelming vote, only 21 members voting in favor of it.

Thus we see that the House, which thought in May that it

might purify itself or protect itself just as well by expulsion at a later day, discovered that the very action which it had taken was turned into a weapon against it when it undertook at that later day to bring about expulsion, and Cannon sat until the end of his term. Will history repeat itself? It took the House several years to rid itself of Cannon. Will it be as deliberate in this instance?

SCHUMACHER AND KING.

This was a case where Schumacher and King, members of the House, were charged with corruption in connection with the China mail service.

The report of the Committee on the Judiciary was filed August 9, 1879.

In declaring against the right of expulsion, it said:

Your committee are of opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is purely a legislative body and entirely unsuited for the trial of crimes.

The fifth section of the first article of the Constitution authorizes "each House to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." This power is evidently given to enable each House to exercise its constitutional function of legislation unobstructed. It can not vest in Congress a jurisdiction to try a member for an offense committed before his election; for such offense a member, like any other citizen, is amenable to the courts alone.

Within four years after the adoption of the first ten amendments to the Constitution, Humphry Marshall, a Senator of the United States from Kentucky, was charged by the legislature of his State with the crime of perjury, and the memorial was transmitted by the governor to the Senate for its action. The committee to whom it was referred reported against the jurisdiction of the Senate, and say:

"That in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State or district wherein the crime shall have been committed. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And they are also of the opinion that, as the Constitution does not give jurisdiction to the Senate, the consent of the party can not give it, and that therefore the said memorial ought to be dismissed."

The minority report did not combat the position of the majority in so far as this case is concerned, as the following extract will show:

That the only question now presented to the House is the question of jurisdiction, which question arises under the last clause of section 5 of Article I of the Constitution:

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

It will be seen that there are no words of limitation on the power to expel, which seems to have been left to the good sense and discretion of each House. In other words, does not the Constitution refer rather to the fitness of the member to hold the office, resting on considerations of public justice and policy, than to the time of his election? Yet the undersigned do not deny but that there are limitations on the power of this House arising from the circumstances of particular cases and the relations of this House to the constituency of an accused member; therefore, as will be seen, the undersigned need not go further in this case than to assert jurisdiction, because the offenses complained of were not known to the constituents of the members in question until after their election.

Much is said, Mr. Speaker, about the moral side of this question. Doubtless it has such a side; and if that were the only consideration before us, the House might take the same action it will take. I do not hesitate, Mr. Speaker, to submit this proposition to the candid judgment of the House and before the bar of history. I am profoundly convinced that I am right and history

will so declare it. The House can no more safely part with this power than it can part with any other power it possesses.

This touches its very vitality; if it loses it, it is in certain conceivable instances absolutely powerless. We are told it is a power that may be abused. What power does the House possess that it has not at some time abused? What branch of the Government is it that, having power, has not abused it? What man, what body of men, clothed with a little brief authority has not made an unwise use of that authority? But shall they therefore be shorn of power? It is a mighty question, it is a question of governmental life, not to be lightly dealt with or inconsiderately answered.

The case of Roberts sinks into insignificance in its presence. If we do not exclude this man, we strike down one of the most vital and necessary powers that belong to a legislative body. Let not such a thing be done. If it is not we may be sure that never again while the spirit of civilization dominates this Republic will any defiant violator of the law, under cover of religion or any other claim, thrust himself into public view, nor will any polygamist knock for admission at the door of Congress. [Applause.]

At the conclusion of the debate.

Mr. TAYLER of Ohio. I move the previous question on the resolution and substitute.

The SPEAKER. The gentleman from Ohio moves the previous question on the resolution reported by the majority and the substitute therefor reported by the minority.

Mr. LACEY. Mr. Speaker——

Mr. RICHARDSON. Did you not include the amendment?

Mr. LACEY. No, sir.

Mr. RICHARDSON. Did the gentleman from Ohio not include in his demand for the previous question that the amendment should be included? I so understood the gentleman from Ohio.

Mr. LACEY. He did not.

The SPEAKER. There is nothing before the House, the Chair will state, but the resolution reported by the majority and the substitute reported by the minority; and the gentleman from Ohio demands the previous question on those two resolutions.

Mr. TAYLER of Ohio. Mr. Speaker, I withdraw that motion, and will yield to the gentleman from Iowa solely for the purpose of offering the amendment, upon which I will reserve the point of order.

The SPEAKER. The gentleman from Ohio yields for the purpose of permitting the gentleman from Iowa to offer the amendment which the Clerk will report.

Mr. TAYLER of Ohio. Reserving the point of order.

Mr. BAILEY of Texas. What is it to be offered as an amendment to?

Mr. LACEY. It will be stated in a moment.

Mr. TAYLER of Ohio. It will be offered as an amendment to the resolution of the majority.

The SPEAKER. The amendment will be read for the information of the House.

The Clerk read as follows:

Insert in line 4, page 1, after the word "and," the following: "he is expelled, and;" so as to read:

"*Resolved*, That under the facts and circumstances in this case Brigham

H. Roberts, Representative-elect from the State of Utah, ought not to have or hold a seat in the House of Representatives, and he is hereby expelled, and that the seat to which he was elected is hereby declared vacant."

Mr. TAYLER of Ohio. Upon that amendment I make the point of order that it is not germane to the resolution which it seeks to amend.

The SPEAKER. The gentleman from Iowa offers the amendment just read to the resolution reported by the majority, and the gentleman from Ohio makes the point of order that it is not germane to the resolution. The Chair desires to know if the gentleman from Ohio withdrew the demand for the previous question?

Mr. TAYLER of Ohio. I did.

The SPEAKER. Very well. Then the point of order is debatable. The Chair will hear the gentleman from Ohio.

* * * * * * *

Mr. TAYLER of Ohio. I desire to be heard for a moment.

The SPEAKER. The gentleman from Ohio is recognized.

Mr. TAYLER of Ohio. I make the point of order upon this amendment, Mr. Speaker, that it is not germane to the resolution. The resolution provides for the exercise of a well-defined power of the House of Representatives, to exclude a member elected from its councils. That is one great power allowed to the House; the amendment seeks to invoke another great power of the House, entirely independent, namely, the power to expel.

Now, then, the power to expel can in no way be connected with the power to exclude. They are entirely different and separate operations and efforts upon the part of the House of Representatives. Similar questions have been decided in this House, and I do not know that there is any doubt about the proposition that a resolution to expel is not germane to a resolution to exclude.

[Mr. LACEY addressed the House.]

Mr. DALZELL. Mr. Speaker, if the Speaker has any doubt about this question I would be glad to be heard for a few moments. If he has not, I do not want to trespass on the patience of the House.

The SPEAKER. The Chair has no doubt about the question.

Mr. DALZELL. Then I do not desire to be heard.

The SPEAKER. The Chair will call attention to one or two facts preliminary to the decision of this question. We have two propositions pending before the House—one of exclusion, which is the proposition of the majority, and one in which we are served with notice that expulsion will be asked for, but involving first the swearing in of Mr. Roberts.

The resolution of the minority does not contain any element of expulsion, but notice is served by the minority that so soon as the oath is administered to Mr. Roberts his expulsion will be moved. The proposition offered by the gentleman from Iowa [Mr. LACEY] adds to the proposition recommended by the majority the idea of expulsion.

The proposition as it stands will deny Mr. Roberts a seat, will not allow him to sit for one instant in this House. That is the proposition of the majority. The amendment offered by the gentleman from Iowa [Mr. LACEY] does not deny him a seat alone, but says, with the majority, that he must not have or hold a seat, but that he must also be excluded from his seat.

The proposition of the majority, which denies Mr. Roberts a seat, can be carried through this House, under the rules, by a

majority vote. With the amendment of the gentleman from Iowa [Mr. LACEY] added, that of expulsion, it will require a two-thirds vote to carry the amended resolution. Does anyone contend that changing a resolution from a condition where a mere majority can carry it through to a resolution which will require a two-thirds vote to carry it through—that such an amendment is germane to the original proposition?

The Chair does not entertain a single doubt but that this is not germane to the original resolution. [Applause.]

The gentleman from Iowa [Mr. LACEY] says, however, that this involves a question above and beyond the rules, being a question of the highest privilege.

The Chair holds with the gentleman from Iowa [Mr. LACEY] that it is a constitutional question and one of the highest privilege, but this body has pursued constitutional methods in treating it, and is now, through a committee appointed in recognition of this high right, considering the matter, and that committee, in the discharge of its great duty to this House under the Constitution, has brought in its two propositions.

The Chair therefore holds that the amendment is out of order, and recognizes the gentleman from Ohio [Mr. TAYLER].

Mr. LACEY. With all due respect to the Chair, I appeal from the decision of the Chair.

The SPEAKER. Gentlemen, let us move with calmness and care. The gentleman from Iowa [Mr. LACEY] rises to exercise a sacred right, that of appeal from the decision of the Chair.

Mr. TAYLER of Ohio. I move to lay the appeal on the table, Mr. Speaker.

The SPEAKER. And the gentleman from Ohio [Mr. TAYLER] moves to lay the appeal on the table. The question is on agreeing to the motion made by the gentleman from Ohio, to lay the appeal of the gentleman from Iowa on the table.

The question being taken, the Speaker announced that the ayes seemed to have it.

Mr. LACEY. A division.

The SPEAKER. The gentleman from Iowa demands a division. On this point, however, the Chair desires to say that he has the right to order tellers and will not count on a matter involving his decision. The Chair, therefore, will appoint as tellers the gentleman from Ohio [Mr. TAYLER] and the gentleman from Iowa [Mr. LACEY].

The tellers having taken their places, the House proceeded to divide.

Pending the announcement of the result,

Mr. LACEY said: Mr. Speaker, in view of the evident spirit of the House on the question, I withdraw the appeal.

The SPEAKER. The gentleman from Iowa withdraws his appeal.

Mr. TAYLER of Ohio. Mr. Speaker, I move the previous question on the resolution and substitute.

The SPEAKER. The gentleman from Ohio moves the previous question on the original resolution and the substitute.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the substitute reported by the minority.

Mr. RICHARDSON. Now, let us adjourn. There will be two yea-and-nay votes.

Several MEMBERS. Oh, no!

The SPEAKER. As many as are in favor of the adoption of the substitute reported by the minority will vote "aye"——

Mr. SLAYDEN. The yeas and nays.

The yeas and nays were ordered.

Mr. LANHAM. We should like to have the resolution read.

The SPEAKER. The gentleman from Texas calls for the reading of the minority substitute. Without objection, it will be again read.

The Clerk read as follows:

Resolved, That Brigham H. Roberts, having been duly elected a Representative in the Fifty-sixth Congress from the State of Utah, with the qualifications requisite for admission to the House as such, is entitled, as a constitutional right, to take the oath of office prescribed for members-elect; his status as a polygamist, unlawfully cohabiting with plural wives, affording constitutional ground for expulsion, but not for exclusion from the House.

The SPEAKER. The question is on the adoption of the substitute which has been read.

The question was taken, and there were—yeas 81, nays 244, not voting 29.

* * * * * * *

The result of the vote was then announced as above recorded. [Applause.]

The SPEAKER. The question now is on the resolution reported by the majority.

The resolution is as follows:

Resolved, That under the facts and circumstances of this case, Brigham H. Roberts, Representative-elect from the State of Utah, ought not to have or hold a seat in the House of Representatives, and that the seat to which he was elected is hereby declared vacant.

Mr. TAYLER of Ohio. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 268, nays 50, not voting 36.

So the resolution was agreed to.

* * * * * * *

The result of the vote was then announced as above recorded. [Loud applause.]

On motion of Mr. TAYLER of Ohio, a motion to reconsider the vote by which the resolution was agreed to was laid on the table.

4009

O